

# U.S. Department of Justice

## United States Trustee Program



FY 2025 Performance Budget  
Congressional Submission  
March 2024

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

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## Key Definitions

**Chapter 7:** *A liquidation case primarily filed by consumers, but also by a small percentage of businesses. 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 11:** *A business reorganization case primarily filed by businesses, but also by individuals. 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.*

**Subchapter V of Chapter 11:** *A streamlined business reorganization process for eligible debtors, which excludes single-asset real estate debtors. Debtors are subject to a debt limit of \$2.7 million, but the cap has been temporarily raised to \$7.5 million through June 21, 2024. The USTP appoints a trustee to evaluate the viability of a debtor's business and facilitate a consensual reorganization plan.*

**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 repayment plan completed within three to five years.*

**Bankruptcy Code and Rules:** *The laws and regulations that govern bankruptcy cases. The federal Bankruptcy Code appears in title 11 of the United States Code. The Federal Rules of Bankruptcy Procedure govern procedures for bankruptcy proceedings.*

## I. Overview of the United States Trustee Program

### A. Introduction

**The mission of the United States Trustee Program is to promote the integrity and efficiency of the nation’s bankruptcy system for the benefit of all stakeholders—debtors, creditors, and the American public.**

The United States Trustee Program (USTP or Program) is a litigating component of the Department of Justice (Department or DOJ). The USTP has standing to participate in every bankruptcy case in the 88 federal judicial districts under its jurisdiction<sup>1</sup> and oversees more than 1,000 private trustees who handle the daily administration of about one million ongoing cases.<sup>2</sup> The Program’s geographic coverage enables the USTP to detect and execute coordinated responses to significant and emerging threats to the integrity of the bankruptcy system, at both local and multi-jurisdictional levels.

For nearly forty years, the Program has served as the statutory “watchdog” of the bankruptcy system nationwide,<sup>3</sup> ensuring compliance with bankruptcy laws while also balancing the legitimate interests of all parties, including debtors, creditors, and others. To continue these efforts **in Fiscal Year (FY) 2025, the USTP is requesting \$263,514,000 for 1,010 direct positions (390 attorneys) and 1,003 direct full-time equivalent employees (FTEs)**. With cases continuing to rise and potentially nearing pre-pandemic levels in FY 2025, an adequately sized workforce will be critical to maintaining appropriate oversight over the administration of cases as well as to ensure the success of Program litigation activities. In the past year, the USTP’s enforcement actions have addressed both novel and recurring legal issues and covered a number of high-profile cases, including those involving cryptocurrency-related businesses as well as a landmark case before the Supreme Court involving a pharmaceutical company and its former owners at the center of the national opioid crisis.

USTP appropriations are offset almost exclusively by fees collected in bankruptcy cases and deposited into the United States Trustee System Fund (Fund). Based on current projections, the USTP estimates fully offsetting the Program’s FY 2025 appropriation. Please see pages 18 to 19 for more information.

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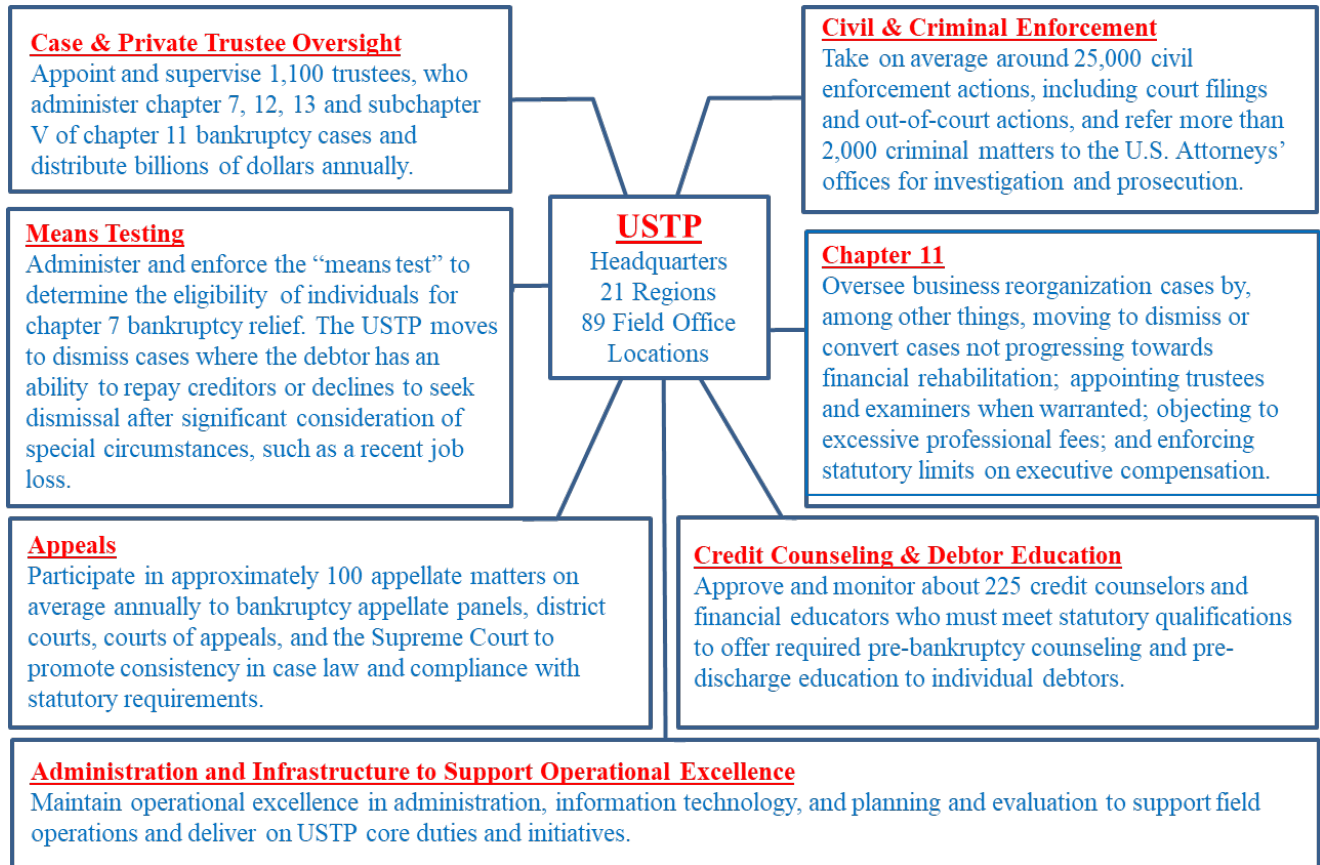
<sup>1</sup> The USTP oversees bankruptcy cases in all federal judicial districts except those in Alabama and North Carolina, where bankruptcy court officials called Bankruptcy Administrators perform a similar function to that of the Program.

<sup>2</sup> Private trustees are non-government employees appointed by the USTP to handle the day-to-day activities of cases.

<sup>3</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.”

## B. Core Duties and Recent Activities

The USTP’s activities span a wide range of administrative, regulatory and enforcement duties as detailed in the following chart. Program enforcement activities encompass not only civil, but also criminal matters and go beyond debtor and creditor participants to include professionals employed in both business and individual debtor cases.



Over the past year the USTP has been focusing on the following areas, described further on pages 5 to 13.

1. Non-Consensual Third-Party Releases in Large Chapter 11 Cases
2. Fraudulent and Abusive Consumer and Business Cases
3. Conflicted Professionals Employed in Chapter 11 Cases
4. Violations by Consumer Debtor Attorneys and Debt Relief Agencies
5. Criminal and Civil Enforcement in Cases
6. Appellate Efforts
7. Increasing Bankruptcy System Accessibility
8. Subchapter V of Chapter 11 (SBRA) of the Bankruptcy Code
9. USTP Response to FY 2023 Banking Turmoil
10. Creditor Abuse
11. Environmental Justice through the Bankruptcy System

*The nation's bankruptcy laws are premised on the notion that honest but unfortunate consumer debtors should be able to receive a fresh start to become 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 or to reallocate their assets through a liquidation.*

### **1. Non-Consensual Third-Party Releases in Large Chapter 11 Cases**

The USTP carries out a wide range of statutory responsibilities through its litigation in large chapter 11 cases. This litigation often draws attention to the Program's role in presenting important recurring legal issues for judicial resolution even when other parties lack adequate resources or the inclination to do so. In executing its duties, the Program balances a range of concerns, including advancing legal issues with potential bankruptcy system-wide impacts. For example, the Program, with the active support of other Department components, continues to litigate the important legal question of the bankruptcy courts' statutory and constitutional authority to approve chapter 11 reorganization plans that require the debtor company's creditors to release their claims against other parties, including the debtor's principals, who have not sought bankruptcy relief. This practice strips creditors and other non-debtor parties of property rights—their rights to personally sue non-debtor parties who did receive such releases for alleged harm—without their consent.

The Program's litigation in this area includes a number of cases, but foremost is the case of a pharmaceutical company at the center of the national opioid crisis. In August 2023, the Supreme Court granted a writ of *certiorari* to review the Second Circuit's recent decision upholding non-consensual releases in the debtor's reorganization plan. More than 1,000 members of, and others related to, the company's founding family—none of whom had filed for bankruptcy—are covered by releases that eliminate their liability to thousands of opioid victims and their survivors who did not consent to those

releases. The Supreme Court heard oral argument on December 4, 2023, and a decision is expected in the months ahead.

The USTP's work in the pharmaceutical case has thus far spanned a period of more than four years and required a team comprising both field- and headquarters-based trial attorneys and senior managers. In addition, the appeals have involved extensive coordination and consultation within the Department. Overall, the Program has expended considerable resources in: objecting to the plan confirmation because of the non-consensual third-party releases; appeal processes in the district court (prevailed) and the Second Circuit (denied); and finally asking the Supreme Court to stay the Second Circuit's adverse ruling while the Solicitor General pursued Supreme Court review and through their ruling on the case.

In addition to the litigation in the pharmaceutical case, the USTP has consistently taken similar positions for decades in chapter 11 cases, both large and small. For example, following the USTP's objection in May 2022, a bankruptcy court rejected the reorganization plan proposed by a regional nursing home operator who filed for bankruptcy in October 2021 along with more than 60 affiliates. The plan included non-consensual releases of non-debtor third parties, including the debtor's owners, officers, and employees. The court agreed with the USTP's objection to the releases because, among other things, plaintiffs in wrongful death and injury lawsuits against the debtor had no opportunity to affirmatively consent to the releases. To address the USTP's objection, the debtors returned to the drawing board and soon thereafter offered a plan with only consensual releases, and the court confirmed the plan as amended.

Additional details on the USTP's work to address non-consensual third-party releases in chapter 11 cases, including in the pharmaceutical company case, can be found on pages 34 to 35.

## **2. Fraudulent and Abusive Consumer and Business Cases**

The USTP's core mission is to protect and preserve the integrity of the bankruptcy system. In fulfilling this mission, the Program strives to promote full access to the bankruptcy system and fair treatment of all participants. The USTP protects the system by combatting fraud and abuse by all parties and professionals, including individual debtors. These efforts include administering the "means test" based on debtors' ability to repay their debts and objecting to the discharges of debtors who conceal assets or commit other misconduct. This work requires significant Program resources and are often less publicized than the Program's activity in large commercial cases, but still have a tremendous impact on improving system integrity. In FY 2023, for example, the USTP's efforts resulted in more than 9,000 formal and informal actions taken to address fraud and abuse by consumer debtors seeking chapter 7 relief, with a total potential monetary impact of over \$551 million. These actions resulted in relief that included the dismissal of consumer cases filed by debtors with an ability to repay their debts or that were found abusive under a bad faith or totality of the circumstances standard. In some cases, fraudulent concealment of assets, false oaths, or other serious misconduct led to a denial of the debtor's discharge.



The USTP also takes enforcement actions to combat abuse in business bankruptcies including in cases filed by the world's second largest cryptocurrency exchange and its more than 100 affiliates with \$16 billion in customer assets. The cases were filed in November 2022 in Delaware. Given the extraordinarily fast corporate collapse, the apparent mismanagement of the debtors and customer assets, and the complete corporate failures described by the new Chief Executive Officer, the USTP moved to appoint an independent examiner to investigate the debtor's failure. The Bankruptcy Code requires the appointment of an examiner if a debtor's debts of a certain kind exceed \$5 million. The examiner investigates a debtor's business, including allegations of fraud, dishonesty, incompetence, misconduct, and mismanagement, and files a public report of the investigation. The bankruptcy court denied the United States Trustee's motion, finding that ordering the appointment of an examiner is not mandatory under the Bankruptcy Code even if the statutory debt standards are satisfied and despite the debtors stipulating that they were satisfied. In July 2023, the United States Court of Appeals for the Third Circuit granted the USTP's petition for direct appeal of the bankruptcy court's decision. On January 19, 2024, the Third Circuit ruled in favor of the USTP and remanded the case to the bankruptcy court to order the appointment.

### **3. Conflicted Professionals Employed in Chapter 11 Cases**

In chapter 11 cases, professionals paid by the estate are often hired to represent the debtor and the official committee of unsecured creditors. Before they can be retained, however, these professionals must file disclosures of connections to all parties involved in the case. Although all parties in a case may object to a professional's retention because of potential or actual conflict of interests or the inadequacy of their disclosures, the USTP is typically the only party to question professionals' disclosures as well as file objections. The USTP recognizes that the issues raised in applications to retain professional firms—including law firms—have grown increasingly complex. This poses challenges for the Program's review of employment applications and the courts' decisions on them. The USTP remains committed to reviewing the unique facts of each case and application as well as interpreting the law in a consistent manner. For example, in a Southern District of New York (SDNY) case of a cryptocurrency exchange, the debtors retained a law firm to handle regulatory matters and subsequently sought to expand the scope of the firm's retention to serve as conflicts counsel for litigation against another cryptocurrency exchange (the adversary) that had filed its own chapter 11 case. The USTP identified two conflicts: (1) the law firm had concurrently represented certain officers of the adversary, including the CEO, and separately, before the adversary's own chapter 11 filing, the adversary had paid the law firm to represent its officers; and (2) the law firm was counsel to the official committee of unsecured creditors in a cryptocurrency bankruptcy case in the district of Delaware. The firm's proposed retention in the SDNY case presented a disabling conflict, because the debtors in the Delaware case had claims against the SDNY debtors and vice versa.

After the USTP objected to the retention of the law firm as conflicts counsel in the SDNY case, the law firm withdrew the retention application with respect to the conflicts matter. The resulting order, though it provided that the firm could continue to serve as the debtors' special regulatory counsel, also provided that the retention application was withdrawn with prejudice and that the law firm could not be paid for the services that it had already provided to the debtor as proposed conflicts counsel.

#### **4. Violations by Consumer Debtor Attorneys and Debt Relief Agencies**

The USTP's efforts to address misconduct by attorneys and debt relief agencies build upon traditional enforcement activities. The Program continues to address misconduct at the local level as well as the special problems created by national consumer bankruptcy law firms whose system-wide violations create widespread, multi-jurisdictional issues. For more information on the Program's activities in this area, including in a case resulting in monetary relief to more than 500 affected consumers and a case that reached the United States courts of appeals, please see pages 24 to 27 and page 36.

#### **5. Criminal and Civil Enforcement in Cases**

Bankruptcy cases may involve conduct that violates both civil and criminal laws. The USTP pursues available civil enforcement remedies to address fraud and abuse issues and refers alleged wrongdoers, as required by statute, to the United States Attorneys and other law enforcement partners for potential criminal prosecution. For example, in a recent successful criminal prosecution brought by the United States Attorney for the Middle District of Florida and investigated by the Federal Housing Finance Agency – Office of the Inspector General and the Federal Bureau of Investigation (FBI), a disbarred attorney was sentenced to 48 months in federal prison for conspiracy to commit bankruptcy fraud and wire fraud, followed by 36 months of supervised release, and was ordered to pay restitution of approximately \$1.5 million. According to court documents, over an approximate seven-year period, the attorney, who was licensed at the time, conspired with his paralegal, to defraud mortgage creditors and guarantors holding notes on properties in foreclosure. The attorney and paralegal falsely and fraudulently represented to distressed homeowners that they would negotiate with creditors and guarantors to prevent foreclosures in exchange for the homeowners' execution of quitclaim or warranty deeds for the properties to an entity controlled by the paralegal. They also convinced the homeowners to pay rent or agree to sell their houses to the entity. In order to continue collecting ill-gotten rents and/or profit from the property sales, the attorney filed fraudulent bankruptcy petitions in the names of the homeowners to prevent the mortgage creditors from lawfully foreclosing and taking title to the properties. In addition, the attorney defrauded his clients of approximately \$1.3 million by acting as a trustee for his clients and holding their money in various bank accounts, which he then diverted into his law firm's accounts and used for personal expenses, like gambling, travel, and automobiles. The USTP's Tampa Office, who had previously prosecuted a civil action against the attorney in a bankruptcy case that resulted in the termination of his privilege to practice law in the bankruptcy courts for the Middle District of Florida, referred the actions of the defendant and his paralegal to the United States Attorney and provided substantial investigative support in the criminal case, as noted in the press release issued by the United States Attorney. For more information on the USTP's criminal enforcement activities, please see pages 30 to 33.

#### **6. 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 2023, the USTP participated in 97 new appellate matters that included 14 matters before the Supreme Court, 17 appeals to the United States courts of appeals, and 65 appeals before district courts and bankruptcy appellate panels. The USTP's position prevailed in 94 percent of the appeals decided in FY 2023.

Ongoing efforts include the Program's considerable work to address court challenges to the USTP's quarterly fee structure as amended by the Bankruptcy Judgeship Act of 2017, Pub. L. No. 115-72 (2017 Amendment). The law adjusted the calculation of quarterly fees for the largest chapter 11 debtors for the calendar quarters beginning January 1, 2018, through March 31, 2021. Litigants argued, among other things, that the 2017 law is unconstitutional because the Judicial Conference mandated the collection of the increased fees in the bankruptcy administrator districts (the six judicial districts in North Carolina and Alabama, which are not in the USTP's jurisdiction) only for cases filed on or after October 2018. The date is nine months after the USTP – in compliance with the date set by Congress – first began requiring debtors to pay the increased fees in all open cases in its districts, which made the law a violation of the Constitution's bankruptcy uniformity clause according to the litigants.

In June 2022, the Supreme Court ruled in *Siegel v. Fitzgerald*, 142 S. Ct. 1770 (2022), that the 2017 Amendment was unconstitutionally non-uniform because of the bankruptcy administrators' failure to charge the increased fee as required by the statute. The Supreme Court did not require the United States to make refunds but instead asked the lower court to decide the remedy for the constitutional violation. The USTP, working with the Office of the Solicitor General and the Civil Division, has been arguing in the courts of appeal, and in lower courts, that refunds by the United States are not the proper remedy. Although the courts of appeal for the Second, Ninth, Tenth and Eleventh Circuits have ruled that the United States should pay refunds, the government has asked the Supreme Court to overturn these decisions. In September 2023, the Supreme Court granted the government's petition for writ of *certiorari* in the Tenth Circuit case and briefing was completed in late December 2023. The case was argued before the Supreme Court on January 9, 2024 and a decision is expected in the months ahead. In light of the Supreme Court's grant of *certiorari* to consider the remedy issue, the government has sought to stay other pending litigation in which claimants are seeking repayments of quarterly fees pending the Supreme Court's decision.<sup>4</sup>

### **7. Increasing Bankruptcy System Accessibility**

The USTP acts to promote enhanced access to justice in the bankruptcy system, which includes removing barriers to entry and ensuring that all participants who comply with the Bankruptcy Code's requirements receive the relief that the law affords them. For individual debtors, this includes permitting flexibility in fee arrangements with their attorneys while guarding against overreach and abuse. To address this, the USTP continues to review chapter 7 consumer bankruptcy cases in accordance with Program guidelines issued in FY 2022 on enforcement related to "bifurcated" fee arrangements in chapter 7 liquidation

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<sup>4</sup> Congress included legislative history in the FY 2023 Omnibus that will allow any refunds, if ultimately ordered, to be paid out of an indefinite general appropriation, such as the United States Judgment Fund, thus preserving the United States Trustee System Fund balance for future appropriation offsets.

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cases.<sup>5</sup> Bifurcated fee agreements—which split an attorney’s fee between work performed prior to the filing of a bankruptcy petition and work performed post-petition—have become increasingly prevalent in these cases. The guidelines outline the Program’s position that, subject to contrary controlling authority, bifurcated fee agreements are permissible so long as the fees charged under the agreements are fair and reasonable, the agreements are entered into with the debtor’s fully informed consent, and the agreements are adequately disclosed.

The Bankruptcy Code’s statutory framework generally prohibits post-petition payment of attorney’s fees arising from prepetition retention agreements in chapter 7 cases. After a bankruptcy case is filed the collection of a filer’s debts, including fees for prepetition attorney work, is stayed, and the fees are subject to discharge. In the past, most attorneys required the full payment of fees prior to filing a chapter 7 bankruptcy case, which could be a barrier to accessing the bankruptcy system for debtors who may need relief but are unable to pay in full before filing. In those jurisdictions that allow them, bifurcated agreements can provide a legal alternative to the traditional attorney’s fee model. The benefits, however, that these types of agreements provide in increasing access and relief to those in need must be balanced against the risk that these fee arrangements, if not properly structured, could harm debtors and deprive them of the fresh start afforded under the Code or affect the integrity of the bankruptcy system. When necessary, the Program has and will continue to take appropriate actions in cases.

In FY 2023, the USTP continued the phased rollout of the statutorily required meetings of creditors for chapter 7, 12, and 13 cases conducted through videoconference. Section 341 of the Bankruptcy Code requires all debtors to appear at a meeting of creditors and be examined under oath by the trustee, United States Trustee (U.S. Trustee), and creditors. The permanent switch to the virtual format, which was based on the USTP’s experience through the COVID-19 pandemic in conducting meetings primarily by telephone, provides flexibilities to debtors who do not, among other things, have to take critical time off from work to participate, and results in greater creditor participation. Video meetings have several advantages over telephonic meetings, including providing visual verification of a debtor’s identity, demeanor, and credibility; preserving the evidentiary value of testimony; and retaining the formal and public nature of the meeting. The change was made following internal and external consultation with stakeholders to assess the effectiveness of virtual meetings.

In August 2023, as part of the USTP’s ongoing assessment efforts, the Program conducted a listening session with attorneys from Colorado Legal Services who provide bankruptcy services to low-income individuals and seniors. The listening session, which addressed participants in the initial pilot for the virtual meetings, provided an opportunity to engage in open dialogue to better understand the experience of debtors from underserved communities and their attorneys in participating in video 341 meetings. The attendees confirmed that video 341 meetings facilitate greater attendance and participation by debtors, and their feedback will be used in refining and improving procedures governing video meetings.

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<sup>5</sup> The guidelines can be found at: <https://www.justice.gov/ust/bifurcated-fee>.

As part of the rollout, the Program has begun evaluating the economies of reducing section 341 meeting spaces. The USTP will continue to be deliberate and transparent as it proceeds in making decisions on space reductions, which should result in significant savings for taxpayers while better serving debtors, creditors, and the public. For more information on the Program's actions to increase access to justice through the bankruptcy system, please see page 38.

### **8. Subchapter V of Chapter 11 of the Bankruptcy Code**

More than three years after Congress' creation of a new subchapter for eligible small businesses to file for a streamlined chapter 11 bankruptcy, the USTP has continued to mark the impact of the Small Business Reorganization Act (SBRA), Pub. L. No. 116-54,<sup>6</sup> on those debtors, who, on average, elect to proceed through the subchapter three out of four times. Since the subchapter's effective date in February 2020, median reorganization plan confirmation times remain approximately four months faster for subchapter V cases than for chapter 11 cases of small businesses not electing subchapter V treatment. Approximately two-thirds of confirmed subchapter V plans have been consensual plans. Based on filings from FY 2020 through FY 2023, plan confirmation levels in subchapter V cases are about twice as high and dismissal rates are approximately half of the historical level for small business cases. Through November 2023, more than 6,800 cases have been filed under the subchapter in USTP districts, including those amended into the subchapter after filing.

The USTP has continued to diligently execute the Program's duties in subchapter V cases, taking enforcement actions in cases each year since the subchapter's inception. These efforts have included actions to object to the eligibility of debtors in subchapter V cases based on statutory requirements, asking the court to deny the debtor's ability to proceed under the subchapter and instead, proceed under "regular" chapter 11. The Program is continuing to monitor any legislative developments that would impact the SBRA and potentially subchapter V filing levels and Program workloads. Statutory changes since the law's enactment have included modifications to debtor eligibility criteria and the debt limit for filers. Following the June 2022 enactment of the Bankruptcy Threshold Adjustment and Technical Corrections Act, Pub. L. No. 117-151, filers include those that are affiliates of certain publicly traded companies but exclude debtors who are a public company or an affiliate of a public company. The debt limit for filers was also raised to \$7.5 million for two years following the law's enactment.<sup>7</sup>

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<sup>6</sup> Subchapter V was enacted in August 2019 through the SBRA and effective in February 2020.

<sup>7</sup> The SBRA applies to small business debtors that meet the statutory debt limitations but excludes single-asset real estate debtors. The SBRA, as originally enacted in February 2020, set the debt limit at \$2.7 million, which was increased a month later to \$7.5 million under the Coronavirus Aid, Relief, and Economic Security (CARES) Act, Pub. L. No. 116-136. The COVID-19 Bankruptcy Relief Extension Act of 2021, Pub. L. No. 117-5, extended the ability to file under the higher debt limit through March 26, 2022. With the June 2022 passage of the Bankruptcy Threshold Adjustment and Technical Corrections Act (BTATC), Pub. L. No. 117-151, the higher limit will apply to filers through June 21, 2024. The BTATC also clarifies that a subchapter V debtor may not be a public company or an affiliate of a public company. Further, it clarifies that the subchapter V trustee is authorized to operate the business of the debtor if the debtor is removed as debtor in possession.

The USTP is also contributing to bankruptcy stakeholder efforts to study and evaluate case law and statistical data on the provisions of the subchapter. In April 2023, the American Bankruptcy Institute, which is the nation's largest trade association of bankruptcy professionals, formed a Subchapter V Task Force (Task Force) on which the USTP's Deputy General Counsel serves as an ex officio member. The Task Force recently concluded a series of seven public hearings on the subchapter's provisions and is expected to issue a report with recommendations in Spring 2024.

For more information on the Program's responsibilities in subchapter V cases and its oversight of subchapter V trustees, please see pages 29 to 30 and page 37 respectively.

### **9. USTP Response to FY 2023 Banking Turmoil**

The collapse of Silicon Valley Bank and Signature Bank was a significant test of the Program's policies and practices designed to safeguard bankruptcy estate accounts held by trustees and debtors in possession in authorized depository institutions. 11 U.S.C. § 345 of the Bankruptcy Code requires that unless estate funds are insured or guaranteed by the United States, the institution holding these funds must post a bond or, as an alternative, deposit securities (31 U.S.C. § 9303). Banks become authorized depositories by executing a uniform depository agreement with the United States Trustee, which provides that banks will comply with the Bankruptcy Code and post a bond in favor of the United States or alternatively deposit securities with the Federal Reserve to protect deposits above the Standard Maximum Deposit Insurance Amount covered by the Federal Deposit Insurance Corporation (FDIC) from a risk of loss. The authorized depository agreement also provides for periodic reporting to ensure compliance. The Program concluded that all bankruptcy estate funds held by the banks were protected through the Bankruptcy Code's and the Program's collateralization requirements,<sup>8</sup> except in cases where a court had waived them. Under the authorized depository agreements signed by Silicon Valley Bank and Signature Bank, the USTP would have therefore been able to enforce rights to this collateral to protect trustee and debtor-in-possession funds irrespective of the announcement by the Federal Reserve, the Treasury Department, and the FDIC that they would honor all deposits held by these two institutions.

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<sup>8</sup> To ensure that trustees and debtors in possession meet their responsibilities to safeguard funds in accordance with section 345(b) of title 11 of the United States Code, the USTP: (1) establishes lists of authorized depository institutions in individual regions and/or districts who have agreed to abide by the requirements established in the Code and by the United States Trustee for deposits of bankruptcy estate funds; (2) executes Uniform Depository Agreements (UDAs) with authorized depository institutions, which among other things, provide for the collateralization of bankruptcy funds on deposit at the depository; and (3) monitors fiduciaries and depositories for their compliance with the Code and UDA. The UDA requires the depository to maintain collateral, unless an order of a bankruptcy court provides otherwise, in an amount of no less than 115 percent of the aggregate bankruptcy funds on deposit in each bankruptcy estate that exceeds the FDIC insurance limits. Additional rules apply to debtors in possession, who, upon filing a petition for relief under chapter 11, must immediately close all pre-petition bank accounts and establish new debtor-in-possession accounts at a USTP-authorized depository institution and deposit all estate funds into the debtor-in-possession accounts. The opening of a new debtor-in-possession account at an authorized depository institution triggers coverage under the UDA.

The USTP continues to monitor the banking situation closely and will act as needed to address any new issues. The Program has provided guidance to trustees related to authorized depository institutions and other collateralization-related requirements for chapters 7, 11, 12 and 13 bankruptcy estate funds that are outlined in section 345 of title 11 of the United States Code. Finally, the USTP anticipates updating its uniform depository agreement with banks to strengthen safeguards further by modernizing the agreement to reflect regulatory developments and lessons learned.

### **10. Creditor Abuse**

Creditor enforcement, including issues relating to the servicing of loans for borrowers in bankruptcy, has been an enforcement priority of the USTP for more than a decade. During that time, the USTP has entered into 16 national settlements with creditors, including 12 national settlements with mortgage servicers that resulted in more than \$250 million in remediation to almost a quarter of a billion impacted bankruptcy consumers. The USTP's creditor enforcement activities are continuing, including efforts to ensure that servicers have made pandemic relief programs, such as mortgage forbearances, equally available to homeowners in bankruptcy, and apply those measures in compliance with Bankruptcy Code and Rules.

### **11. Environmental Justice through the Bankruptcy System**

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

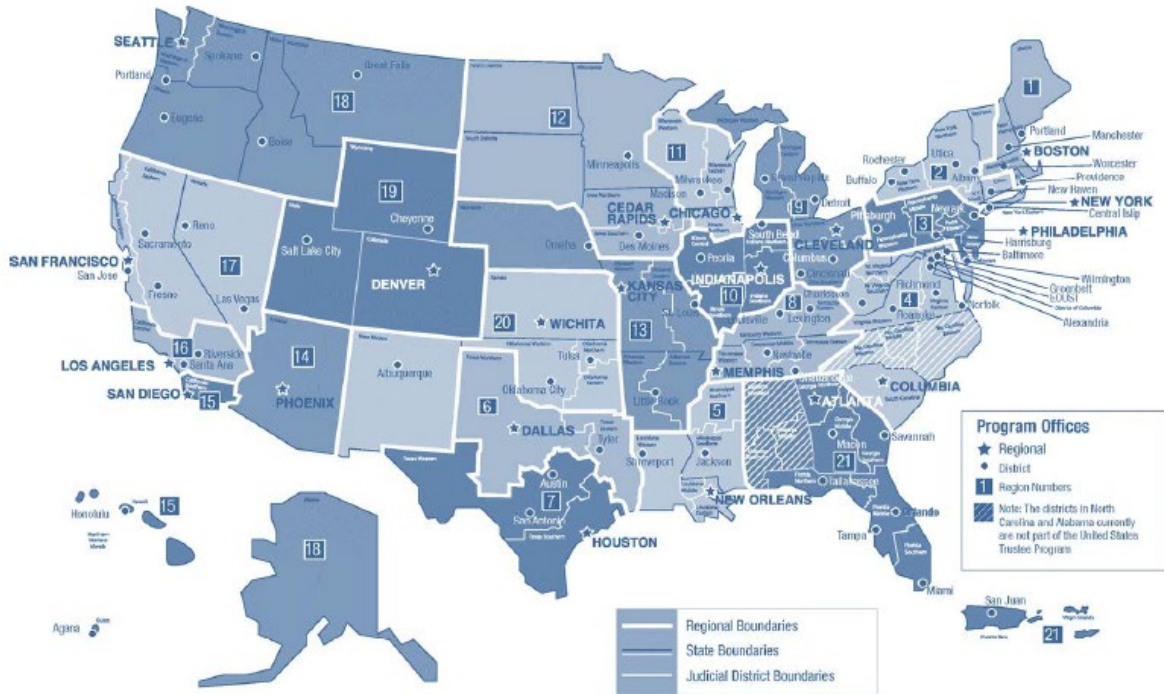
## **C. USTP Structure**

The USTP's headquarters, the Executive Office for United States Trustees (EOUST), is located in Washington, D.C. and is led by a Director who serves under authority derived from the Attorney General. Field operations comprise of 21 geographic regions across the country directly supervised by United States Trustees, who report to the Office of the Director. The 89 field offices within those regions are headed by Assistant United States Trustees. The Program's staff, totaling 953 direct FTEs in FY 2023, consists of attorneys, financial analysts, paralegals, and professional support staff. Over 90 percent of them are located in field offices across 44 states and Puerto Rico, enabling staff to participate in 250 bankruptcy courts and re-convene statutory section 341 meeting when approved by the United States Trustee. Their field presence also allows the Program to maintain local jurisdictional knowledge and familiarity with geography-specific factors that could influence debtor, creditor and other bankruptcy participant behavior. The remaining 10 percent of staff are in the EOUST's six other major units responsible for general counsel, criminal enforcement, trustee oversight, planning and evaluation, general

# United States Trustee Program

administration, and IT functions.

### United States Trustee Program Map of Regions and Offices



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 assignments are accomplished. In recent years, more than half of all field staff have been assigned some tasks that originate in other offices, including a significant number of managers who are serving double duty. Program-wide working groups further help the Program to execute the USTP’s mission within available resources and ensure consistency in Program approach. Advancements in the use of technologies to facilitate work across the EOUST and field offices has further enhanced the efficiency impact of these initiatives.

## D. Challenges

The USTP faces several internal and external challenges.

### *Maintaining Funding to Support Staffing, Operations, and Critical Investments*

Balancing resources for staffing and operations remains a challenge for the USTP that will be intensified in FY 2025 by rising filings and potential turnover in a workforce where approximately 30 percent of staff are eligible to retire. The Program has an expansive field structure of 21 regions with 89 field offices that cover approximately 250 courts. Variations in local laws and court procedures as well as a range of factors specific to a region necessitate the need for a dispersed and appropriately sized USTP workforce.



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With bankruptcy filings, however, that may begin to approach pre-pandemic levels in FY 2025, caseloads per employee would increase significantly in FY 2025. Workload issues would be further compounded by the complexities of cases that arise, which in the past year included new and novel legal issues raised in cases involving cryptocurrency-related businesses. Litigation on recurring legal issues with system-wide significance can also unexpectedly lead to a considerable increase in workloads, such as the multiple cases before the Supreme Court during their most recent term.

The USTP's operational costs also remain significant. With almost 90 percent of the Program's annual appropriation tied directly to staffing, rent, and other fixed costs, the USTP has historically had to rely on nominal carryover balances to address critical unfunded needs, including the initiation of the Program's IT modernization effort; the relocation of offices from commercial to federal leased space, as mandated; and statutorily required audits of chapter 7 and 13 bankruptcy cases. No carryover balances, however, are currently anticipated for FY 2025.

Modernizing the USTP's core case management system remains a top priority for the USTP. The system enables staff to review and manage sensitive case-related information for about one million ongoing cases on average annually, including the personally identifiable information of individual debtors. In addition to costly maintenance and the absence of standard modern analytical capabilities, the system is at greater risk from malicious cyber-attacks given the significantly outdated underlying technologies from the 1990s. The system cannot support current cybersecurity requirements. This includes multi-factor authentication, necessary for the Administration-mandated adoption of the Zero Trust IT security model, which calls for robust processes to validate user identities at any level and entry point to a system. Given the interconnections with other Department systems, delaying this effort extends the risk of harm beyond the USTP.

Under these constraints, the USTP will need to prioritize efforts within its enforcement activities to continue delivering on its mission and ensure critical operational investments are maintained. With about one million Americans relying on the bankruptcy system annually, this approach would be necessary to minimize the impact on bankruptcy participants and the effectiveness of the Program's watchdog role.

### *Evolving and Complex Caseload*

The USTP's sustained heavy workload in civil enforcement, along with the sheer sophistication and evolving nature of fraud schemes and abusive activities, present challenges for USTP staff to move cases through the system efficiently. In addition to carrying out statutory duties, including means testing in chapter 7 consumer cases and trustee oversight, the Program must monitor developing and complex issues associated with chapter 11 bankruptcy filings, fraudulent or abusive conduct by debtors, and misconduct by creditors and professionals to effectively execute its duties. More information on the USTP's activities in these areas can be found in section IV, which begins on page 22.

### *Unpredictable Changes in Bankruptcy Filings*

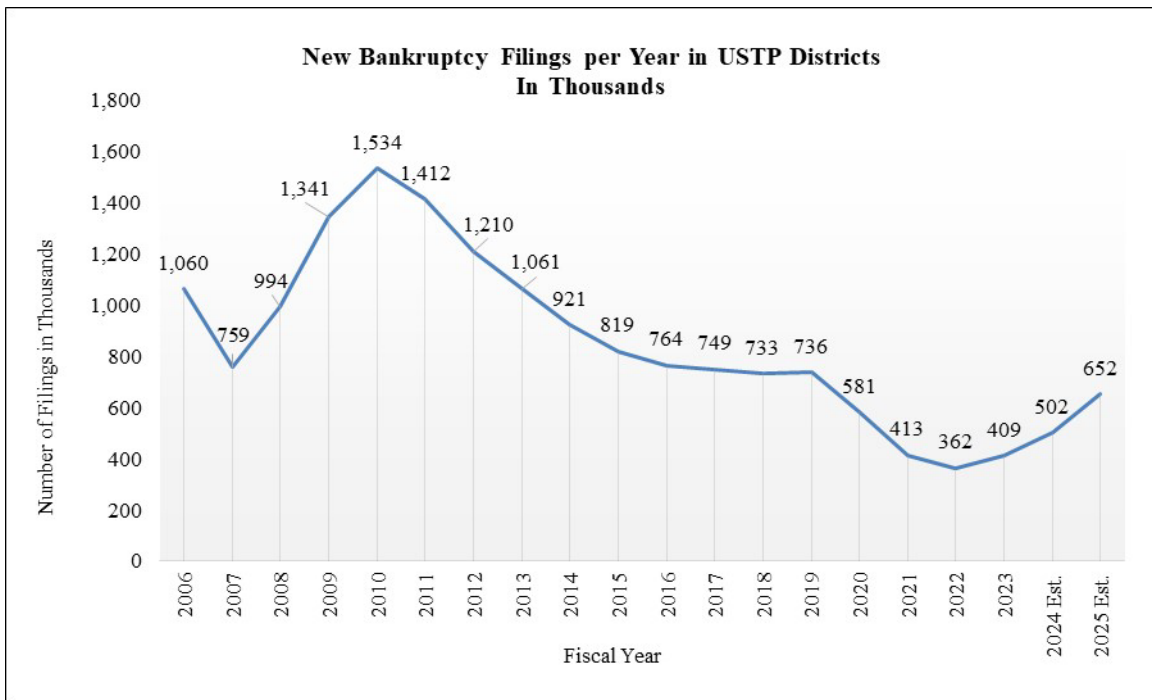
The potential for unforeseeable changes in the number and location of bankruptcy filings creates challenges for the USTP in caseload management. Changes to the Bankruptcy Code and other laws as well as economic factors including employment levels, interest rates, consumer credit, and the availability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

Bankruptcy filings in USTP districts followed a general pattern for a significant time prior to 2007, historically increasing about two-thirds of the time followed by a decrease over the other one-third. Then, during the Great Recession, filings doubled over FY 2007 through FY 2010 before declining steadily over FY 2011 through FY 2016. Filings remained relatively flat through FY 2019, then dropped by more than 20 percent overall in FY 2020 due potentially to the impact of economic relief programs such as foreclosure moratoriums on potential filers. Overall bankruptcy filings fell nearly 30 percent in FY 2021 and another 12 percent in FY 2022, before beginning to rebound in FY 2023. Filings rose by 13 percent during FY 2023, totaling more than 408,000 for the fiscal year.

Broken down by chapter, filings followed different trajectories since FY 2020. Consumer filings primarily accounted for the reductions in aggregate filings as they comprise the vast majority of annual filings. Overall chapter 11 filings, however, sharply increased during the early months of the COVID-19 pandemic, then steadily decreased during FY 2021 and FY 2022 before rebounding with a 36 percent increase in FY 2023. The earlier increase reflected the impact of filings by large public companies, including mega-cases, which more than doubled during calendar year 2020 to reach their highest level since the Great Recession. Overall small business filings also increased significantly early in the pandemic before beginning to decline along with total chapter 11 filings in FY 2021. Notably, regardless of filing totals, around 75 percent of chapter 11 small business debtors have continued to proceed under subchapter V since its inception. During FY 2023, filings were up by 13 percent overall, with increases in chapters 7, 11, and 13.

## United States Trustee Program

The following chart reflects actual and projected new bankruptcy filings for the USTP from FY 2006 through FY 2025.<sup>9</sup> The pace at which filings may return to pre-pandemic levels continues to be difficult to predict. The impact to filings from the COVID-19 pandemic, residual effects of the CARES Act, and subsequent stimulus laws appears to be diminishing as filings increased in FY 2023, with chapter 7, 11, and 13 cases all up compared to FY 2022. If assuming a continued gradual increase to these pre-pandemic levels, filings could reach 502,000 cases in FY 2024 and 652,000 cases in FY 2025 or 11 percent below the FY 2019 pre-pandemic level.



### E. Risks

#### *Unpredictable Changes in and Challenges to the Bankruptcy Code*

Changes to the Bankruptcy Code can significantly impact the USTP's work, often with uncertainty as to the extent or timing of changes. These changes can occur in response to any number of factors including changes in the economy and other laws. To remain agile and responsive, the USTP must be positioned appropriately from a resource standpoint to pivot and address these types of issues. For example, when the SBRA was enacted in August 2019, the USTP had to immediately refocus its priorities to establish a comprehensive infrastructure for the appointment and oversight of new chapter 11 subchapter V trustees as well as the evaluation and monitoring of the individual cases. Among other things, this included recruiting and clearing more than 250 candidates (from more than 3,000 applicants) to serve as subchapter

<sup>9</sup> On average, the USTP oversees the administration of about one million ongoing cases each year, including cases filed during the year.

V trustees, developing a comprehensive manual and handbook to guide USTP staff and subchapter V trustees in carrying out their new duties, conducting extensive training and outreach, and coordinating closely with the bankruptcy courts on a myriad of administrative issues. These important initial efforts were critical to the successful implementation of the new law and are activities that remain ongoing. For more information on the USTP's responsibilities in subchapter V cases and oversight over subchapter V trustees, please see pages 29 to 30 and 37 respectively.

Legal challenges relating to the Bankruptcy Code also present uncertainties for the USTP's workload planning given the lack of predictability in terms of number and scope. The USTP enforces the Code and defends challenges to its provisions, including by litigating issues of first impression. In recent years, the number of appeals to which the USTP has been a party or has provided assistance to the Department's Office of the Solicitor General or appellate staff of the Civil Division has been consistently near 100 per year, including more than 90 appellate matters on average annually from FY 2019 to FY 2023. These matters include significant challenges to the USTP's quarterly fee structure, as detailed on page 9.

### **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 (Fund).<sup>10</sup> A portion of filing fees paid by consumer and business debtors as well as quarterly fees that are based on disbursements made by chapter 11 debtors, excluding subchapter V debtors, comprise the majority of revenue. The appropriation is initially derived from the general fund of the Department of Treasury (Treasury)<sup>11</sup> and subsequently offset primarily by the Program's fees during the fiscal year as well as the balance of the U.S. Trustee System Fund if fees are less than the appropriation. Filing fees are paid at the commencement of each case in chapters 7, 11, 12, and 13,<sup>12</sup> and quarterly fees are paid by chapter 11 debtors except those in subchapter V of chapter 11 of the Bankruptcy Code. Unlike other bankruptcy fees that are set administratively by the Judicial Conference of the United States, the filing fees and quarterly fees paid to the USTP are set in statute and cannot be adjusted by the USTP.

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

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<sup>10</sup> Revenues include a small amount of statutorily-determined bankruptcy fines and other deposits to the Fund.

<sup>11</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 Fund.

<sup>12</sup> The USTP receives a portion of these filing fees as specified by statute.

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72.<sup>13</sup> As a result, the Program’s appropriations from FY 2018 through FY 2020 were fully offset by fees in those fiscal years. The fee increase affected only about 10 percent of chapter 11 cases.

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

- Reduces quarterly fees paid in almost all chapter 11 cases—it does not increase quarterly fees for any case—and simplifies the fee structure;
- Provides \$5.4 million to offset the cost of extending 25 bankruptcy judgeships;
- Enables the offset of the USTP’s appropriations through FY 2025;<sup>14</sup>
- Uses chapter 11 fees, when available, to pay for an increase in private trustee compensation under 11 U.S.C. § 330(e) for chapter 7 liquidation cases and to cover the Administrative Office of the U.S. Courts’ (AOUSC) cost to administer those payments;
- Deposits any remaining excess funds into the U.S. Trustee System Fund.

The following table reflects actual and projected deposits to the U.S. Trustee System Fund for FY 2020 through FY 2025.

USTP Bankruptcy Fees & Other Deposits by Source (\$ in Thousands)	FY 2020 Actual	FY 2021 Actual	FY 2022 Actual	FY 2023 Actual	FY 2024 Est. <sup>1</sup>	FY 2025 Est.
Bankruptcy Filing Fees	\$46,278	\$33,351	\$27,329	\$30,260	\$54,975	\$50,440
Chapter 11 Quarterly Fees <sup>2/3</sup>	\$280,827	\$335,551	\$168,141	\$182,521	\$176,262	\$239,040
Other	\$195	\$59	\$60	\$53	\$59	\$60
<b>Total Fees and Other</b>	<b>\$327,299</b>	<b>\$368,961</b>	<b>\$195,530</b>	<b>\$212,835</b>	<b>\$231,296</b>	<b>\$289,540</b>
Interest	\$1,940	\$187	\$229	\$3,385	\$1,277	\$6,210
<b>Total Deposits</b>	<b>\$329,238</b>	<b>\$369,148</b>	<b>\$195,759</b>	<b>\$216,220</b>	<b>\$232,573</b>	<b>\$295,750</b>

<sup>1</sup> FY 2024 reflects estimates from the USTP’s FY 2024 President’s Budget. The Program currently estimates deposits next year could be \$27.5 million higher than initially forecast. The updated estimate reflects the impact to filing fees of overall cases increasing more slowly than originally projected offset by a quicker rebound in chapter 11 cases and resulting quarterly fees as well as higher interest projections.

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

<sup>3</sup> Due to sustained lower filings since the pandemic, the USTP was not able to fully offset the Program’s FY 2022 and FY 2023 appropriation with just fee collections and interest alone and had to drawdown on the USTP Fund balance to repay appropriations in those years (\$43 million and \$39 million respectively). Consequently, the Program did not have chapter 11 quarterly fees to transfer out for the increased chapter 7 private trustee compensation and the cost of administering those payments as enacted under the Bankruptcy Administration Improvement Act of 2020 (BAIA), Pub. L. No. 116-325.

<sup>13</sup> More information on the quarterly fees can be found at: <https://www.justice.gov/ust/chapter-11-quarterly-fees>.

<sup>14</sup> Due to filings, fees as well as drawdowns from the USTP Fund were necessary to fully offset USTP appropriations in FY 2022 and FY 2023.

### **G. Efforts to Advance President and Government-Wide Priorities**

To ensure the highest level of stewardship of federal resources, the USTP devotes resources to ensuring excellence in its administration and infrastructure. Three areas of the Program's focus are described further below.

#### *IT Modernization and Cybersecurity*

The USTP initiated the modernization of its Automated Case Management System (ACMS) and Data Exchange for Trustees (DXTR) system in FY 2023 using limited carryover funding. Together, the systems enable staff to review and manage sensitive case-related information for about one million ongoing cases on average annually, including the personally identifiable information of individual debtors. Completing the project is a priority for the USTP. The underlying platform for the ACMS is over 30 years old and more vulnerable to security risks than systems on more modern platforms. Current cybersecurity requirements are not supportable by the system. This includes multi-factor authentication, necessary for the Administration-mandated adoption of the Zero Trust IT security model, which calls for robust processes to validate user identities at any level and entry point to a system. In addition, the ACMS cannot capture additional data elements required by the Program to execute its duties nor support updates for modern capabilities related to scalability, flexibility and availability.

#### *Resources to Support USTP Talent*

In recent years, the Program has used additional resources provided by Congress to hire more staff. This focus on staffing has been critical to Program operations as the USTP navigates through the ongoing attrition of retirement-eligible staff, who comprise a significant portion of the Program's workforce. Moreover, the Program recently entered into a contractual agreement with the Hispanic Association of Colleges and Universities and anticipates a significant increase in the number of interns recruited from historically underrepresented communities. The USTP also participates in the Bankruptcy Inclusion, Diversity, Equity, and Accessibility (IDEA) Consortium, dedicated to expanding knowledge of opportunities in bankruptcy to these communities. The Program plans to continue these initiatives in FY 2025 and beyond.

#### *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 Department's Justice Management Division and shared litigation support is provided by the Civil Division. Further, Help Desk operations for Tier 1 support and call management are provided via a contract managed by the Bureau of Alcohol, Tobacco, Firearms and Explosives. Use of this contract has allowed the Program to save over \$100,000 a year. The USTP recently extended this partnership to provide laptop depot and provisioning services for staff at a modest savings.

## II. Summary of Program Changes

The FY 2025 request does not include any program changes.

## III. Appropriations Language and Analysis of Appropriations Language

### United States Trustee System Fund

For necessary expenses of the United States Trustee Program, as authorized, \$263,514,000[\$255,000,000] to remain available until expended: *Provided*, That, notwithstanding any other provision of law, deposits of discretionary offsetting collections to the United States Trustee System Fund and amounts herein appropriated shall be available in such amounts as may be necessary to pay refunds due depositors: *Provided further*, That, notwithstanding any other provision of law, fees deposited into the Fund as discretionary offsetting collections pursuant to section 589a of title 28, United States Code (as limited by section 589a(f)(2) of title 28, United States Code) shall be retained and used for necessary expenses in this appropriation and shall remain available until expended: *Provided further*, That to the extent that fees deposited into the Fund as discretionary offsetting collections in fiscal year 2025[2024], net of amounts necessary to pay refunds due depositors, exceed \$263,514,000[\$255,000,000], those excess amounts shall be available in future fiscal years only to the extent provided in advance in appropriations Acts: *Provided further*, That the sum herein appropriated from the general fund shall be reduced (1) as such fees are received during fiscal year 2025[2024], net of amounts necessary to pay refunds due depositors, (estimated at \$289,540,000[\$232,573,000]) and (2) to the extent that any remaining general fund appropriations can be derived from amounts deposited in the Fund as discretionary offsetting collections in previous fiscal years that are not otherwise appropriated, so as to result in a final fiscal year 2025[2024] appropriation from the general fund estimated at \$0.

### Analysis of Appropriations Language

The USTP is not proposing any language changes.

#### IV. Program Activity Justification

The budget for the USTP is reflected in one decision unit: the Administration of Cases.

<i>Administration of Cases</i>	<b>Direct Positions</b>	<b>Estimated FTE</b>	<b>Amount (\$000)</b>
2023 Enacted <sup>1</sup>	[1,078]	953	\$255,000
2024 Continuing Resolution <sup>2</sup>	[1,010]	1,003	\$255,000
Adjustments to Base and Technical Adjustments	[0]	0	\$8,514
2025 Current Services	[1,010]	1,003	\$263,514
2025 Program Increases	[0]	0	\$0
2025 Program Offsets	[0]	0	\$0
2025 Request	[1,010]	1,003	\$263,514
<b>Total Change 2024-2025</b>	<b>[0]</b>	<b>0</b>	<b>\$8,514</b>

<sup>1</sup> FTEs are actual.

<sup>2</sup> Amounts included herein referring to the FY 2024 Continuing Resolution reflect an Annualized Continuing Resolution level.

The following table outlines the USTP's IT budget.

<i>Administration of Cases</i> <b>Information Technology Breakout</b>	<b>Direct Positions</b>	<b>Estimated FTE</b>	<b>Amount (\$000)</b>
2023 Enacted <sup>1</sup>	[31]	28	\$41,035
2024 Continuing Resolution <sup>2</sup>	[34]	34	\$34,652
Adjustments to Base and Technical Adjustments	[0]	0	(\$8,088)
2025 Current Services	[34]	34	\$26,564
2025 Program Increases	[0]	0	\$0
2025 Program Offsets	[0]	0	\$0
2025 Request	[34]	34	\$26,564
<b>Total Change 2024-2025</b>	<b>[0]</b>	<b>0</b>	<b>(\$8,088)</b>

<sup>1</sup> The amount reflects estimated FY 2024 non-personnel costs that the USTP had projected funding in FY 2023 through beginning carryover and estimated recoveries but will be executing instead in FY 2024.

<sup>2</sup> Amounts included herein referring to the FY 2024 Continuing Resolution reflect an Annualized Continuing Resolution level.



## A. Program Description

### 1. A Balanced Approach to Civil Enforcement

*During FY 2023, the USTP took more than 22,000 civil enforcement actions against debtors and creditors, including court filings and out-of-court actions, with a potential monetary impact of over \$632 million in debts not discharged, fees returned, and other relief.*

#### Debtor Fraud and Abuse

The USTP combats fraud and abuse by debtors which can, among other things, include attempts to conceal assets and evade the repayment of debts when debtors have available disposable income to pay them. The related civil enforcement actions by the Program include taking steps to dismiss abusive filings and deny discharges to ineligible or dishonest debtors as described further below.

#### **USTP Wichita Office Obtains Dismissal of Chapter 7 Case, Preventing Discharge of \$339,331 in Unsecured Debt**

In the District of Kansas, a dismissal prevented a repeat-debtor's chapter 7 discharge of \$339,331 in unsecured debt. An investigation by the USTP's Wichita office revealed that the debtor deducted unsecured debt payments, cigarettes, and a soon-to-expire domestic support obligation, among other items. If not subtracted, the debtor would have monthly net income of nearly \$2,000 for his unsecured creditors. In addition to this ability to pay, the presumption of abuse arose, and the debtor's attempted rebuttal items were determined to be insufficient. The debtor failed to respond to the U.S. Trustee's motion to dismiss.

*Means Testing.* Under the means test, which was adopted under the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA), individual debtors with primarily consumer debt and income above the state median for their household size are subject to a statutorily prescribed formula to determine disposable income and whether their case is presumptively deemed abusive. The formula is based partially on allowable expense standards issued by the Internal Revenue Service (IRS) for tax collections. In FY 2023, a case with disposable income above \$252.50 per month was presumed abusive and subject to dismissal.

The effectiveness of the means test largely depends on the USTP's 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 or that justify a declination. Common reasons the USTP declines to seek dismissal of a case that is presumed abusive include recent job loss or continuing medical debt. On average, in more than 60 percent of cases, the USTP concludes that a case deemed presumptively abusive should not be dismissed.

*Bad Faith or Totality of the Circumstances.* Even if a case is not presumed abusive under the means test, the Bankruptcy Code permits the USTP to seek dismissal for bad faith or the totality of the circumstances.

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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.

*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 Actions Result in Denial of Discharge of \$1,381,052 of Scheduled Debt**

In the District of Delaware, following the U.S. Trustee's motion, a chapter 7 individual debtor was denied a discharge for failure to explain the loss of cryptocurrency. The debtor's total scheduled debt was \$1,381,052—including \$255,564 of unsecured debt—along with damages of more than \$2 million alleged by the debtor's former employer, a cryptocurrency lender, which had filed for bankruptcy months earlier. The bankruptcy court found that the debtor orchestrated the transfer of approximately 225 Bitcoins, worth millions of dollars, to himself from the cryptocurrency lender, where he was an officer, at about the time of his termination from the company. The court denied the individual debtor's discharge because he liquidated some of the Bitcoins and failed to keep records of the liquidation and expenditure of them, as evidenced by his failure to respond to the U.S. Trustee's request for information.

### **Creditor Abuse**

The USTP continues to monitor compliance by national creditors for fraud and abuse issues. 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. To date, the Program has entered into 16 national settlements with creditors, including the settlements discussed on page 13.

### **Consumer Debtor Attorneys, Petition Preparers and Debt Relief Agencies**

Addressing misconduct by consumer debtor attorneys remains a top priority for the USTP. Misconduct and substandard practice by debtors' attorneys include failing to meet with clients, causing costly delays by not appearing at section 341 meetings or court proceedings, filing fraudulent credit counseling certificates with the court and engaging in a range of other unprofessional behavior. Debtor clients are not the only victims of these improper, fraudulent, and abusive practices. Courts and creditors are victims as well. For example, courts and creditors are forced to expend resources in proceedings that are unnecessarily lengthy or complex due to the failure of debtors' counsel to do their jobs properly. The USTP's enforcement actions in this area have led to remedies including refunds of attorneys' fees already paid, cancellation of retention contracts, civil penalties, and injunctions. In FY 2023, the Program brought more than 500 actions in court and took nearly 2,200 additional out-of-court actions against debtors' attorneys and non-attorney bankruptcy petition preparers including under the petition preparer provisions

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of section 110, the provisions of section 329 governing disclosure and reasonableness of debtor attorney's fees, and the debt relief agency provisions of section 526 of the Bankruptcy Code.<sup>15</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 even minimal professional standards for representation of their clients; and their willingness to engage in improper practices to obtain payment of their fees.

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

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

### **USTP Actions Result in Disgorgement of Attorney Fees in 38 Cases Totaling More than \$72,500 and the Granting of USTP Requests for Injunctive Relief in 34 Cases**

The District of Idaho granted the USTP's omnibus motions seeking injunctive and/or monetary relief against a counsel representing many debtors in the district. In one exemplar decision, the court agreed with the USTP that the attorney's fee disclosures filed with the court were misleading and that the bifurcated fee arrangement used by the attorney—which relied on outside financing secured by the attorney's accounts receivable—created a conflict of interest under Idaho's Rules of Professional Conduct because the arrangement placed the debtors at financial risk while only benefitting the attorney. Fees were ordered disgorged in 38 cases, totaling more than \$72,500, and the USTP's requests for injunctive relief were granted in 34 cases.

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<sup>15</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. Section 526 limits the conduct of debt relief agencies including attorneys that assist debtors filing for bankruptcy relief. Debt relief agencies are also governed, where applicable, by Sections 527 and 528 of the Code.

### **USTP Prevails in Enforcement Action Against National Consumer Law Firm Involved in Car Repossession Scheme, Assists in Successful Prosecution of Repo Company Owner**

In litigation throughout the country, the USTP alleged that a national consumer bankruptcy law firm and its attorneys systematically engaged in the unauthorized practice of law; failed to oversee non-attorney staff who employed high-pressure sales tactics; provided inadequate representation to consumer debtors; and promoted and participated in a scheme to convert auto lenders' collateral, and then misrepresented the nature of that scheme.

The United States Court of Appeals for the Fourth Circuit agreed with the USTP's position and affirmed the bankruptcy court's order revoking the ability of one of the firm's "local partners" to practice law in the bankruptcy court for one year and imposing sanctions for misconduct related to the firm's "New Car Custody Program" and onboarding practices, and the attorney's individual actions in the consumer debtors' cases. *U.S. Trustee v. Delafield*, 57 F.4th 414 (4th Cir. 2023).

The bankruptcy court's order arose from an adversary proceeding that the USTP brought against the attorney, as well as the law firm, a repossession company involved in the custody program, and other defendants, in connection with the attorney's representation of two of its clients. The USTP alleged that the New Car Custody Program involved a complex scheme in which the law firm's distressed clients surrendered their vehicles to the repossession company in exchange for the company paying their attorney and filing fees in bankruptcy. The law firm then towed the vehicles to lots in three states where mechanic's liens or storage liens trump first liens in certain circumstances. The repossession company profited by charging creditors excessive and unnecessary fees for the towing and storage. Some creditors refused to pay the exorbitant fees to recover their collateral, which allowed the repossession company to auction the vehicle and retain the proceeds.

The owner of the repossession company was convicted after a six-day jury trial in the Southern District of Indiana on one count of conspiracy, 14 counts of fraud, and three counts of money laundering. He was then sentenced to 70 months in prison and ordered to pay \$49,046 in restitution. The USTP referred the matter to the U.S. Attorney and the FBI, and staff from several Program field offices assisted in the investigation and prosecution.

In the interim, the law firm shut down. As a result of the USTP's actions since 2016, the law firm paid almost \$900,000 in monetary relief to more than 500 affected consumers and was subject to bans from practice in at least four jurisdictions.

At a local level, the USTP has been continuing its focus on the review of attorney fee arrangements. In this area as well, the USTP's efforts aim to balance enhancing access to the consumer bankruptcy system while protecting debtors against abuse or overreaching by professionals who should be acting in their clients' best interests. As discussed earlier on page 9 to 10, bifurcated attorney fee agreements have become increasingly prevalent as a workaround to the Bankruptcy Code's structure that generally prohibits payment of a chapter 7 debtor's attorney's fees after the filing of a case. These type of fee arrangements, through their flexibility, may increase access and relief to debtors in need, but those benefits must be balanced against the risk that they could harm debtors and deprive them of their fresh

start in bankruptcy if not properly structured. Courts and stakeholders have expressed differing views on the propriety of bifurcated fee agreements. In order to balance these concerns and promote a uniform enforcement approach, in June 2022 the USTP published enforcement guidelines for its personnel to follow in determining whether bifurcated fee arrangements are appropriate. It is the USTP's position that, absent contrary local authority, bifurcated fee agreements are permissible provided that they do not harm debtors or the integrity of the bankruptcy system. The guidelines, which are publicly available, generally provide that attorney's fees under bifurcated agreements must be fair and reasonable, that attorneys must provide adequate disclosures to their clients and obtain their fully informed consent, and that attorneys must make adequate public disclosures consistent with the requirements of the Bankruptcy Code and Rules.<sup>16</sup> The USTP will continue to investigate and, when appropriate and in accordance with the guidelines, take enforcement actions related to inappropriate bifurcation and factoring.

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

## 2. Chapter 11 Oversight

The USTP carries out significant responsibilities in chapter 11 reorganization cases, at times taking action when impacted parties lack the resources to address an issue. Although the USTP does not substitute its business judgment for that of management, the Program's role is critical to protecting the interests of all stakeholders by advocating for strict compliance with the law and promoting management and professional accountability. Among other duties, the USTP is responsible for appointing official committees of creditors after conducting a comprehensive analysis of the types of debt held by unsecured creditors, their financial exposure and other factors that determine whether such entities adequately represent the creditor body as a whole as required under the Bankruptcy Code. The Program may also appoint trustees and examiners when warranted and ordered by the court, such as when there is suspected financial wrongdoing. In addition, the Program moves to dismiss or convert chapter 11 cases when they are not progressing toward financial rehabilitation. A chapter 11 case may continue for many years, and the USTP takes action, when necessary, to ensure a case's timely resolution.

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<sup>16</sup> The Guidelines for United States Trustee Program (USTP) Enforcement Related to Bifurcated Chapter 7 Fee Agreements can be found at <https://www.justice.gov/ust/page/file/1511976/download>. The document is an internal directive to guide USTP personnel in carrying out their duties, but the final determination of whether a bifurcated fee agreement complies with the Bankruptcy Code and Rules resides solely with the court. The guidelines do not have any force or effect of law, nor do they impose any obligations on parties outside the USTP beyond those set forth in the Bankruptcy Code and Rules.

## United States Trustee Program

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

### *Review of Proposed Executive Bonuses*

The USTP enforces statutory limitations on executive compensation under section 503(c) of the Bankruptcy Code, often as the only party challenging inappropriate insider 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 2023, the USTP filed 25 formal objections to executive bonuses and severance payments in chapter 11 cases with a success rate of 82 percent among objections that were decided during FY 2023. 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.<sup>17</sup>

### **Court Sustains USTP Denver Office's Objection to Insider Bonuses**

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

### *Review of Professional Retention Applications*

The USTP rigorously reviews applications to retain professionals to ensure the adequate disclosure of connections and the absence of disqualifying conflicts of interest. The Program executes this role by faithfully reading and applying the Bankruptcy Code and Rules and raises the issues it has identified to the courts for their ultimate determination. Over the past five fiscal years, the Program has on average annually filed more than 400 objections and taken more than 1,700 out-of-court actions.

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<sup>17</sup> In September 2021, the GAO issued a report on the incidence and magnitude of awards of executive bonuses by companies before a chapter 11 bankruptcy filing. The USTP provided significant assistance to the GAO for the report, which incorporated many of the USTP's technical comments but did not recommend any changes to the Program's practices or procedures. The GAO suggested that Congress consider amending the Code to clearly subject such bonuses to bankruptcy court oversight and to specify the factors that courts should consider in approving such bonuses. For more information, please see <https://www.gao.gov/products/gao-21-104617>.

### **Court Sustains USTP Chicago Office’s Objection to Debtor’s Application to Employ Counsel**

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

Bankruptcy reorganizations and the organizational structure of professional firms seeking to be retained in bankruptcy cases—including law firms and financial advisors—have grown increasingly complex, particularly with the advent of investment arms and affiliate companies. This poses challenges for the Program’s review of employment applications and the courts’ decision on such applications. The USTP is committed to reviewing the unique facts of each case and application, and to interpreting the law in a consistent manner. Pursuant to this, the Program released an internal directive that outlines the general principles for USTP staff to follow in their enforcement of the duty of professionals to disclose connections to a bankruptcy case under the Bankruptcy Code and Rules. The document, which is publicly available, provides a common framework for consistent enforcement of the Bankruptcy Code and Rules related to disclosures and conflicts.<sup>18</sup>

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

The USTP continues to devote significant resources to addressing Program duties provided under the SBRA. Although the Program is responsible for appointing and supervising private trustees in such cases, which unlike in most chapter 11 cases are required, staff must also review and monitor cases throughout the bankruptcy process and act to ensure the effective disposition of cases within the tight timelines established by the law. In the early stages of a case, the Program thoroughly reviews the key business and reorganization facts of each case. This process enables staff to verify that debtors meet the eligibility requirements under the law as well as select and appoint the most appropriately skilled trustee from a pool of available candidates with diverse skillsets. Further, Program staff conduct the initial debtor interview and convene statutorily required section 341 meetings, which can involve a wide range of stakeholders.

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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.

## United States Trustee Program

After this initial stage, Program duties include ensuring that cases meet the statutory voting requirements and determining if plans are consensual or non-consensual, which can require the Program to litigate to refine interpretations of the law. In addition, the Program objects to debtor eligibility in subchapter V cases based on statutory requirements, asking the court to deny the debtor's ability to proceed under the subchapter and, instead, to require debtors to proceed under "regular" chapter 11. If conversion to a different chapter is necessary, USTP staff continue their diligent oversight of such filings based on the applicable chapter provisions and case facts. When appropriate, Program staff will act to ensure debtors are fulfilling the law's requirements, such as by ensuring they attend section 341 meetings and file statutory reports, pleadings and documents. In addition, Program staff also provide guidance on the USTP's views on the law to assist the trustees in performing their assigned duties. To ensure the success of subchapter V cases, the activities in this area are resource-intensive for field staff, requiring research of potentially affiliated filings in the same or other jurisdictions; an ongoing comprehensive understanding of each individual case; and close collaboration and coordination with multiple stakeholders, including the trustee and staff at the individual court level.

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

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

### **3. Criminal Enforcement**

Bankruptcy cases may involve conduct that violates both civil and criminal laws. The USTP pursues available civil enforcement remedies to address fraud and abuse issues and refers alleged wrongdoers 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.

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*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.*

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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



## United States Trustee Program

throughout the country. Many staff, including attorneys, bankruptcy analysts, auditors and paralegals are called upon to assist with investigations, provide expert or fact testimony at criminal trials, and, in the case of attorneys, provide guidance on bankruptcy law and related issues. In particular, through their designation as Special Assistant U.S. Attorneys, more than 20 attorneys assist U.S. Attorneys' offices in the prosecution of bankruptcy and bankruptcy-related crimes. In FY 2023, the Program also responded to more than 200 requests for assistance from the United States Attorneys' Offices (USAOs), the FBI, and other law enforcement agencies on matters not originating from a USTP referral. The USTP further contributes to the Department's ability to detect criminal activity through expansive training for Federal, State, and local law enforcement personnel; USTP staff; private trustees; and members of the bar and other professional associations. Its training program has reached, on average, nearly 3,000 individuals annually in recent years including agents and other representatives from the USAOs, the FBI, the IRS' Criminal Investigation Division, the U.S. Postal Inspection Service, the Department of Housing and Urban Development (HUD) Office of the Inspector General, and the Secret Service.

### **Real Estate Investor Sentenced to 78 Months in Federal Prison for Role in Multi-Million Dollar Investment and Bankruptcy Fraud Scheme in Case Referred by the USTP Detroit Office**

A real estate investor was sentenced in the Eastern District of Michigan to 78 months in federal prison for his role in a multi-million-dollar investment and bankruptcy fraud scheme. He pleaded guilty to wire fraud and withholding information in a bankruptcy proceeding, acknowledging that his scheme cost creditors and investors approximately \$3 million. In addition to the prison sentence, the defendant is subject to a supervised release period of three years after the prison sentence is served.

According to court documents, the investor or his agents provided fraudulent information to potential investors from Israel, India, South Africa, and other countries to induce investments in real estate in Michigan, Texas and elsewhere. Money was sent to him through interstate or international wire transactions. Court documents also show that the investor furthered the fraud scheme by having deeds, wiring instructions, bank statements, leases and inspection reports — all fake — provided to investors. He also used a fake name.

In an attempt to escape the consequences of his yearslong investment fraud scheme, the defendant filed a chapter 7 case to obtain a discharge of the debts he owed his creditors including victims, while failing to comply with his obligations under the Bankruptcy Code to make full and complete disclosure of his assets and liabilities. As a result of the USTP Detroit Office's successful civil enforcement action it filed against the defendant based on his concealment of assets, false statements and withholding of information, the bankruptcy court denied him a discharge of his debts.

The investigation of the case was conducted by the FBI, and the USTP Detroit Office was recognized for providing substantial assistance to law enforcement in the case. The case was prosecuted by a former Assistant United States Attorney and Special Assistant United States Attorney from the USTP Detroit Office.

**Suburban Chicago Attorney Sentenced to More than Three Years in Federal Prison for Bankruptcy Fraud and Ordered to Pay \$357,492 in Restitution in Case Involving Valuable USTP Assistance**

After pleading guilty to fraudulently assisting her brother to conceal more than \$357,000 from creditors and the trustee in his bankruptcy case, the defendant was sentenced in the Northern District of Illinois to a 37-month prison term, followed by two years of supervised release. She was also ordered to pay \$357,492 in restitution.

While a licensed attorney, the defendant engaged in the fraud scheme with her brother and co-defendant. When her brother filed for bankruptcy, he possessed hundreds of thousands of dollars in cashier's checks payable to himself, but which were the property of his bankruptcy estate. The defendant helped her brother conceal the cashier's checks, as well as money orders and other checks, by depositing them into her attorney trust account (IOLTA). She then withdrew a portion of the funds in cash or for use in, among other things, real estate transactions for her brother's benefit.

When the bankruptcy trustee discovered the IOLTA account activity, the defendant attempted to conceal the scheme by fabricating documents and making materially false statements to the bankruptcy court. The funds concealed through the fraud scheme have yet to be recovered.

The sentence was announced by the Acting United States Attorney for the Northern District of Illinois; the FDIC's Office of Inspector General; HUD's Office of Inspector General; the IRS' Criminal Investigation Division; the Federal Housing Finance Agency, Office of Inspector General; the FBI; the Department of the Treasury's Office of Inspector General; the City of Chicago Inspector General; and the Chicago Housing Authority Inspector General. The Acting United States Attorney also recognized the valuable assistance provided by the USTP.

The government was represented by multiple Assistant United States Attorneys and a Special Assistant United States Attorney from the USTP's Chicago Office.

A jury previously convicted the defendant's brother for his role in their bankruptcy fraud scheme with his sister as well as additional embezzlement and tax fraud offenses. Evidence at the brother's trial revealed that he was a close associate of the former president of a bank based in Chicago and played a key role in an embezzlement scheme at the bank. The bank was closed after the Office of the Comptroller of the Currency determined that it was insolvent and had at least \$66 million in nonperforming loans.

Sentencing for the defendant's brother was set for January 2024. Numerous other defendants, including several high-ranking former bank directors, officers and employees were charged as part of the federal criminal investigation into the failure of the bank.

The USTP is committed to supporting the Department's goal to protect vulnerable communities including the elderly as well as historically underrepresented and underserved populations in the bankruptcy system. The USTP evaluates cases for and takes action on signs of potential criminal as well as civil violations. Because the bankruptcy process requires transparency, disclosures and feedback from multiple parties, including the debtor, creditors, attorneys, private bankruptcy trustees and others, the process can reveal facts and circumstances in cases that involve the abuse of an elderly person's money or property,

sometimes by a person with access to the elderly individual such as a caregiver, or even more sophisticated fraudulent financial schemes that target the elderly. Beyond financial crimes, the bankruptcy process can also reveal instances of community-wide violations including those that may involve environmental crime and injustice against disadvantaged communities.

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

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

The USTP is the only participant in the bankruptcy system with a national perspective and a statutory 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 2023, the Program participated in 97 new appellate matters beyond the bankruptcy court, including 17 matters at the United States courts of appeals level and 14 before the Supreme Court.*

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

- The debtor in *In re LTL Mgmt., LLC*, No. 21-30589 (Bankr. D.N.J.), and a non-debtor affiliate, “New JJCI,” were created by their parent Johnson & Johnson (J&J), through a corporate restructuring of “Old JJCI” in a “divisive merger” under Texas law (often called a “Texas two-step”) two days before the bankruptcy filing. J&J allocated to LTL all of Old JJCI’s liabilities, including approximately \$2 billion in contingent liability on tort claims related to the sale and manufacture of talc-containing baby powder alleged to cause cancer, and a substantial asset known as a “funding agreement” backed by J&J and New JJCI, and valued at \$61 billion to pay administrative expenses and to fund a trust to resolve talc liabilities. J&J also transferred Old JJCI’s primary assets worth approximately \$61 billion to the debtor’s newly created affiliate, New JJCI, which did not file for bankruptcy relief. J&J’s stated goal was to isolate the talc liabilities in one of the new subsidiaries, LTL, so that entity could file for chapter 11 without subjecting the operating enterprise, New JJCI, to bankruptcy proceedings.

Creditors moved to dismiss the bankruptcy case alleging that the filing was in bad faith, while the U.S. Trustee supported dismissal after the bankruptcy court would not hear his pending motion – effectively denying it – to appoint an examiner. The bankruptcy court denied the motion to dismiss,

finding that the divisive merger had a legitimate purpose to reduce costs and speed payments to tort victims.

*In re LTL Mgmt., LLC*, 637 B.R. 396, 407-08 (Bankr. D.N.J. 2022), *rev'd*, 58 F. 4<sup>th</sup> 738 (3<sup>rd</sup> Cir. 2023).<sup>19</sup>

The creditors appealed directly to the Third Circuit. After the circuit accepted the case for direct review and the Solicitor General authorized participation, the USTP appeared and argued as *amicus curiae* in support of the creditors and dismissal of the case. The Third Circuit, in a highly consequential decision, reversed the bankruptcy court and ordered that the case be dismissed as a bad faith filing because the debtor was not in imminent financial distress given the open-ended funding agreement with its highly solvent, nondebtor parent, Johnson & Johnson.

*In re LTL Mgmt., LLC*, 58 F. 4<sup>th</sup> 738 (3<sup>rd</sup> Cir. 2023).

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

*In re Imerys Talc America, Inc.*, 38 F.4<sup>th</sup> 361 (3<sup>rd</sup> Cir. 2022).

- The Supreme Court granted the USTP’s petition for *certiorari* to review a decision by the United States Court of Appeals for the Second Circuit that reversed a decision by the United States District Court for the Southern District of New York. The district court had agreed with the United States Trustee and reversed the bankruptcy court’s order confirming the debtors’ chapter 11 plan, which included non-consensual, third-party releases of claims against non-debtors. The debtor, “engulfed in a veritable tsunami of litigation” as noted in the district court’s opinion, filed for chapter 11 bankruptcy in September 2019. Eventually, the bankruptcy court confirmed a plan for the debtors that included “broad releases, not just of derivative, but of particularized or direct claims . . . to the members of the Sackler family (none of whom is a debtor in the bankruptcy case) and to their affiliates and related entities.” The USTP appealed the confirmation order. The USTP argued that the releases were impermissible under the Bankruptcy Code, and even if they were ever permissible under the statute, they were impermissibly broad and abusive. The Program also argued that the releases violated the Due Process Clause and that the bankruptcy court lacked authority as an Article I

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<sup>19</sup> On the same day the bankruptcy court denied the motion to dismiss, it also extended the automatic stay to, and entered a preliminary injunction to enjoin actions against, related non-debtor “Protected Parties.” *LTL Mgmt., LLC v. Bondurant* (*In re LTL Mgmt., LLC*), 638 B.R. 291 (Bankr. D.N.J. 2022).

court to extinguish common-law claims between non-debtors under *Stern v. Marshall*, 564 U.S. 462 (2011). In a 142-page opinion, the district court reversed the order confirming the plan. The court analyzed whether the bankruptcy court had statutory authority to grant such releases outside the asbestos context. The district court concluded that “the Bankruptcy Code does not authorize such non-consensual non-debtor releases: not in its express text . . .; not in its silence . . .; and not in any section or sections of the Bankruptcy Code that, read singly or together, purport to confer generalized or ‘residual’ powers on a court sitting in bankruptcy.” The district court also agreed that the bankruptcy court lacked constitutional authority under *Stern* to impose the releases. The district court otherwise declined to “reach the constitutional questions that have been raised by the parties.”

The debtor and others appealed the district court’s ruling to the Second Circuit. The court of appeals reversed the district court’s judgment in May 2023. As a preliminary matter, the court held that the bankruptcy court had subject-matter jurisdiction, but not constitutional authority under *Stern*, to impose the non-debtor releases—although the latter issue did not require reversal. The court then held that two provisions of the Bankruptcy Code, read together, provide statutory authorization for courts sitting in bankruptcy to approve non-consensual third-party releases. The first provision states that “[t]he [bankruptcy] court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of” the Code. 11 U.S.C. § 105(a). The second provision states that “a plan may[] . . . include any other appropriate provision not inconsistent with the applicable provisions of” the Code. 11 U.S.C. § 1123(b)(6). Although concurring in the judgment, one judge on the Second Circuit panel only “reluctantly” agreed with the majority’s conclusion given “binding” Second Circuit precedent and expressed considerable skepticism of the court’s reasoning, which he viewed as being “without any basis in the Code.” The concurring judge also urged resolution by the Supreme Court given the division among the courts of appeals on the issue.

After the Second Circuit denied the government’s motion to stay the issuance of its mandate pending the Supreme Court’s disposition of the government’s forthcoming petition for a writ of *certiorari*, the government filed in July 2023, an application in the Supreme Court to stay (and recall, if necessary) the Second Circuit’s mandate. The government also invited the Supreme Court to construe the stay application as a petition for *certiorari* but stated that the government would otherwise file a petition in August 2023, in time for the Court to consider the petition at its October 2023 conference. On August 10, 2023, the Court granted the stay application, agreed to treat it as a petition for *certiorari*, and granted the petition. The Court heard oral argument on December 4, 2023, and a decision is expected in the months ahead.

*In re Purdue Pharma L.P.*, 635 B.R. 26 (S.D.N.Y. 2021), aff’d in part, rev’d in part sub nom. *Purdue Pharma L.P. v. City of Grande Prairie*, 69 F.4th 45 (2nd Cir. 2023), cert. granted sub nom. *Harrington v. Purdue Pharma L.P.*, \_\_ S. Ct. \_\_, 216 L. Ed. 2d 1300, 92 U.S.L.W. 3026 (2023).

- The United States Court of Appeals for the Fourth Circuit agreed with the USTP and affirmed the bankruptcy court’s imposition of monetary relief and revocation of practice privileges against a bankruptcy attorney for mis-serving his client in a number of serious ways. The court rejected the

attorney’s claims that the bankruptcy court’s order violated his due process rights. The court also rejected the attorney’s argument that the bankruptcy court should have “ignored his post-complaint conduct in seeking conflict of interest waivers from” his former clients. The panel found that the “post-complaint conduct showed that, instead of correcting matters, [the attorney] continued his misconduct” and furthermore he “was given the opportunity to respond to the post-complaint conduct issues through his direct testimony and post-complaint briefing.

*United States Trustee v. Delafield*, 57 F.4<sup>th</sup> 414 (4<sup>th</sup> Cir. 2023).

- The United States Court of Appeals for the Seventh Circuit agreed with the USTP and affirmed a bankruptcy court’s order requiring a debtor’s attorney to return fees he took in a client’s chapter 7 case because his inaccurate fee disclosure violated 11 U.S.C. § 329 and Bankruptcy Rule 2016. The United States Trustee “admonished [Peraica] to file a corrected financial disclosure form with the bankruptcy court after learning that counsel’s original filing underreported his compensation.” But “many times over counsel disregarded the direction.” The United States Trustee then filed a motion for disgorgement and the bankruptcy court “did not find the question close: counsel’s failure to update his disclosure form constituted a flagrant violation of the Bankruptcy Code warranting complete disgorgement of all past fees received by counsel.” The Seventh Circuit recognized that section 329 and Rule 2016, together, provide “in no uncertain terms” an obligation on debtor’s attorneys to “inform the bankruptcy court of their compensation and promptly update the filing if their fees change.” And “[n]othing in this framework provides leeway for partial or incomplete disclosure.” The court rejected Peraica’s argument that the estate was not harmed by his actions because “[w]hether or the degree to which the estate sustained harm . . . is beside the point.” “The fee disclosure obligations are mandatory, not optional.” The court went on to explain, disclosure “is mandatory for good reason: It protects both debtors from overreaching lawyers and creditors from losing their fair share of the estate.” The court concluded that “the bigger picture takeaway should be clear: Counsel for debtors in bankruptcy proceedings should recognize that failures to disclose will not be taken lightly.”

*Peraica v. Layng (In re Dordevic)*, 62 F.4<sup>th</sup> 340 (7<sup>th</sup> Cir. 2023).

### 5. Private Trustee Oversight

The USTP recruits, appoints, and supervises private trustees, who are not government employees, to administer bankruptcy estates and distribute payments to creditors in cases filed under chapters 7, 12, and 13. The trustees handled more than one million ongoing cases during FY 2023 and, on average annually, distribute billions in assets. The Program also recruits, appoints, and supervises trustees for small business cases proceeding under subchapter V of chapter 11 of the Bankruptcy Code. Trustee duties and their required skillsets vary according to the applicable Code provisions. Chapter 7 trustees collect the debtor’s assets that are not exempt from creditors, liquidate the assets, and distribute the proceeds to creditors. Chapter 12 and chapter 13 trustees evaluate the financial affairs of the debtor, make recommendations to the court regarding confirmation of the debtor’s repayment plan, and administer the court-approved plan

by collecting payments from the debtor and disbursing the funds to creditors in accordance with the priorities of the Code. Subchapter V trustees are primarily responsible for assessing the viability of a debtor's business and facilitating a consensual reorganization plan within short timelines.

The USTP's oversight duties for the different trustees also vary according to the applicable laws. These duties include interpreting the statutes and issuing appropriate guidance to trustees regarding their administration of cases and their duties to debtors, creditors, other parties in interest, and the United States Trustee. When new laws are enacted, such as in the case of the SBRA, this activity can require more resources in the implementation stage of the new provisions. Ongoing resources, however, are still required beyond this stage. For example, the Program may need to issue updates to guidance and conduct enhanced training for trustees as well as their employees in response to staff experience gained under new laws, to clarify the Program's positions on laws, or in response to amendments to the law. In the case of the SBRA, the Program expended resources to enhance oversight policies and mechanisms even after the first year of the subchapter V effective date. These activities included investments in the Program's IT systems as well as the development of data-enabled electronic forms for filing with the court and for consistent and efficient reporting of case data by trustees to the Program. The Program also periodically issues updated guidance to trustees, for example, clarifying requirements for the deposit of estate funds to reflect current banking practices and economic conditions.<sup>20</sup> Moreover, for chapter 7 trustees as well as trustees for cases in chapters 12 and 13, the USTP must also closely monitor the trustees' accounting, financial management, and administration of debtor funds and property of the bankruptcy estate for the payment to creditors and ensure the funds are appropriately safeguarded. In appropriate cases, the USTP also takes action when improper activity is suspected or alleged. Further, the Program is responsible for overseeing trustee compensation to ensure payments, including those based on reasonable and necessary expenditures in trustee budgets or as approved by the bankruptcy court, conform to the Code. To ensure the effectiveness of the USTP's oversight of chapter 7, 12, and 13 trustees, Program activities include reviewing around 55,000 reports on chapter 7 cases on average annually as well as about 250 annual and amended operating budgets of chapter 12 and 13 trustees, and annually conducting more than 400 audits and other reviews of trustee operations on average.

### **6. Credit Counseling and Debtor Education**

To ensure that debtors are aware of alternatives to bankruptcy, and to provide tools to avoid future financial problems when they exit bankruptcy, the Bankruptcy Code requires individual debtors to receive credit counseling, including a discussion of options outside of bankruptcy before filing, and to complete a personal financial management education course before receiving a discharge of debts. The USTP is charged with the responsibility of approving agencies and providers who must meet statutory qualifications to offer these services to debtors. The Program also monitors their operations through in-depth, quality-of-service reviews and investigates complaints submitted to the USTP. Agencies and providers can be denied approval or have their approval revoked for failing to meet statutory duties and USTP requirements, and approved entities must re-apply annually to maintain their standing. At the end

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<sup>20</sup> More information on this and other recent guidance updates can be found here: [An Overview of the Changes to the Handbook for Chapter 7 Trustees and Updates to the Uniform Transaction Codes](#)

of FY 2023, 83 credit counseling agencies and 143 debtor education providers were approved to offer these services. In recent years, around 6 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 about \$35, making these services accessible at a relatively modest cost.

### **7. Improving Accessibility to Bankruptcy Proceedings**

The USTP is committed to promoting access to the bankruptcy system. To help ensure that individuals with limited English proficiency can fully participate in the statutory section 341 meetings of creditors where debtors testify under oath, the Program offers free interpreter services as needed. In FY 2023, nearly 10,000 calls were made for interpreter services in more than 70 languages.

Following the COVID-19 pandemic, the Program moved to a policy allowing statutory section 341 meetings of creditors to proceed in whole or in part through virtual formats and annually devotes budgetary resources for the provision of supporting technologies to private bankruptcy trustees.<sup>21</sup> The meetings are mandatory administrative proceedings in the bankruptcy process in which each debtor must appear and testify under oath. They are generally the only formal bankruptcy proceeding most debtors ever participate in. Based on the USTP's experience through the pandemic, the flexibilities provided by virtual meetings place fewer burdens on debtors who do not, among other things, have to take critical time off from work to participate, potentially suffering a loss in pay, and result in greater creditor participation. After consulting internally and with external stakeholders to assess the effectiveness of remote meetings, the USTP decided to make changes to the section 341 meeting process after the pandemic and has begun to phase in a new approach by which all initial section 341 meetings in chapter 7, 12, and 13 cases are moving to a video platform. As the USTP expands to conducting these meetings by video nationwide, it has also begun to evaluate the economies of gradually reducing section 341 meeting space requirements. The USTP will be deliberate and transparent as it proceeds in making these decisions, which should result in significant savings for taxpayers while better serving debtors, creditors, and the public.

### **8. Promoting Management Excellence**

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

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<sup>21</sup> The USTP's policy is to conduct first meetings of creditors by videoconference and reflects the Program's deliberate consideration and analysis of the benefits of video meetings over telephonic meetings. Video meetings are preferable for a variety of reasons, most notably in the areas of verifying the debtor's identity, preserving the evidentiary value of that testimony, and retaining the formal and public nature of that meeting.



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well as through mentoring programs that allow long-serving staff to share knowledge with newer employees.

A USTP-wide working group comprising headquarters and field staff from almost every level of the organization and representing nearly all occupations continues to strive to enhance diversity among Program staff to bolster employee satisfaction and foster workforce performance. The group's responsibilities include recommending changes to Program operations and policies to ensure the USTP's workforce fully embraces diversity, seeking all opportunities to foster and promote a diverse workforce, and complying with Department diversity mandates. These initiatives and other workplace policies have enabled the USTP to remain in the top 30 percent ranking among federal agency subcomponents, including ranking 7<sup>th</sup> among 18 components within the Department, based on the 2022 Best Places to Work survey issued by the Partnership for Public Services. As for the private bankruptcy trustees that the Program recruits and oversees, to promote the Program and publicize available positions the USTP has expanded its outreach to target an increased number of professional and academic affinity organizations, based in part on its successful recruitment campaign for SBRA trustees; increased its use of digital and social media; and deployed enhanced trustee training. The training focuses on a number of areas including professional conduct that promotes diversity and inclusion in the bankruptcy system; detection of and responses to potential signs that environmental justice may be compromised in communities of underrepresented and low-income populations; and overall reminders to remain vigilant in monitoring and reporting any conduct that impinges on the integrity of the bankruptcy system.

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

**B. Performance Tables**

PERFORMANCE AND RESOURCES TABLE												
Decision Unit: Administration of Cases												
RESOURCES (\$ in thousands)			Target		Actual		Target		Changes		Requested (Total)	
			FY 2023		FY 2023		FY 2024		Current Services Adjustments & FY 2025 Program Changes		FY 2025 Request	
Total Costs and FTEs (reimbursable FTE are included, but reimbursable costs are bracketed and not included in the total)			FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
			1,060	255,000 [37]	953	255,000 [28]	1,003	255,000 [30]	0	8,514 [0]	1,003	263,514 [30]
Type	Strategic Objective	Performance	FY 2023		FY 2023		FY 2024		Current Services Adjustments & FY 2024 Program Changes		FY 2025 Request	
Program Activity 1: Case and Trustee Administration			FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
			546	131,458 [19]	494	132,263 [15]	520	132,263 [16]	0	4,416 [0]	520	136,679 [16]
Performance Measure	1.1 Protect our Democratic Institutions and 4.1 Reinvigorate Antitrust Enforcement and Protect Consumers /1	No. of 707(b) inquiries per successful outcome	7.0		7.3		7.0		0.0		7.0	
		Percent of Trustee Final Reports reviewed within 60 days	95%		100.0%		95%		0%		95%	
Program Activity 2: Civil and Criminal Enforcement and Appellate Matters			FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
			514	123,542 [18]	459	122,737 [13]	483	122,737 [14]	0	4,098 [0]	483	126,835 [14]
Performance Measure	1.1 Protect our Democratic Institutions and 4.1 Reinvigorate Antitrust Enforcement and Protect Consumers /1	Number of successful actions related to consumer protection	N/A		1,905		N/A		N/A		N/A	
		Number of successful discharge actions	N/A		636		N/A		N/A		N/A	
		Potential additional returns to creditors through civil enforcement and related efforts	N/A		\$632.9M		N/A		N/A		N/A	
		Litigation success rate	95%		97.0%		95%		0%		95%	
Data definitions are outlined in the narrative that follows.												

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

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

Targets for the remaining three measures are counts of overall actions or sums of dollars, with actual measure levels directly impacted by the size of the USTP’s workforce as well as overall bankruptcy filing levels. Consequently, the Program suspended targets for the measures in FY 2018, in response to declining and uncertain staffing levels. The USTP had planned to revisit targets for these measures after the conclusion of an aggressive hiring initiative, launched in FY 2019. However, the impact of the COVID-19 pandemic on staffing plans, actual employee levels, as well as filings, required the Program to delay these efforts. The USTP is tentatively planning to resume these efforts in FY 2025 barring any further disruptions to staffing or filings levels.

### Data Definitions

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

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

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

*Number of successful discharge actions:* The Program added this new measure in FY 2018 to replace the number of successful discharge complaints measure, which was discontinued in FY 2018. This measure consists of successful formal and informal discharge actions that result in waiver, denial or revocation of discharge of debt. These actions are taken to resolve issues such as hidden assets and unreported income and represent one of the most serious civil remedies against fraud and abuse by individual debtors in the bankruptcy system. (This measure does not include successful discharge actions against debtors who are ineligible due to a prior discharge or who failed to complete a debtor education course.)

*Potential additional returns to creditors through civil enforcement and related efforts:* The Program's actions have a significant financial impact, and this measure tracks the amounts involved as the result of the Program's formal and informal actions. The majority of this total is attributable to debts not discharged in chapter 7 and potentially available to creditors. Other amounts included are fee requests and claims reduced or withdrawn, fees returned, and sanctions and fines against professionals.

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

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Strategic Objective	PERFORMANCE MEASURE TABLE						
	Decision Unit: Administration of Cases						
	Performance Measures		FY 2022	FY 2023	FY 2023	FY 2024	FY 2025
			Actual	Target	Actual	Target	Target
1.1 Protect our Democratic Institutions and 4.1 Reinvalidate Antitrust Enforcement and Protect Consumers <sup>1/</sup>	Performance Measure	No. of 707(b) inquiries per successful outcome	6.8	7.0	7.3	7.0	7.0
	Performance Measure	Percent of Trustee Final Reports reviewed within 60 days	99.7%	95%	100%	95%	95%
	Performance Measure	Number of successful actions related to consumer protection	1,809	N/A	1,905	N/A	N/A
	Performance Measure	Number of successful discharge actions	370	N/A	636	N/A	N/A
	Performance Measure	Potential additional returns to creditors through civil enforcement and related efforts	\$574.9M	N/A	\$632.9M	N/A	N/A
	Performance Measure	Litigation success rate	96.0%	95%	97%	95%	95%

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

## C. Performance and Strategies

### *Performance Plan and Report of Outcomes*

The USTP's dedicated professionals have continued to fulfill mission priorities despite reduced staffing levels. In FY 2023, this included making more than 2,200 criminal referrals to United States Attorneys and law enforcement, including referrals of fraud in obtaining funds under the CARES Act; participating in nearly 100 appellate matters beyond the bankruptcy court, including 17 matters at the United States court of appeals level and 14 before the Supreme Court; reviewing about 40,000 trustee reports; overseeing around 400 audits as well as conducting field reviews for chapter 7 and 13 trustee operations; and filing 25 formal objections to executive bonuses and severance payments in chapter 11 cases with a success rate of 82 percent among objections that were decided during FY 2023. Overall, the USTP took more than 22,000 formal and informal civil enforcement actions, with a potential monetary impact of more than \$632 million in debts not discharged, fines, penalties, and other relief.

## Strategies to Accomplish Outcomes

As detailed in the preceding Program Description, the USTP employs a number of strategies, as summarized below, to meet the meet the Department’s objectives of: (1) protecting the interests of all stakeholders in the bankruptcy process by advocating for strict, equitable compliance with the law and by promoting management and professional accountability in business reorganization cases; and (2) pursuing equal access to economic justice systems, including in bankruptcy proceedings.

- a. **Enforce strict and equitable compliance with federal bankruptcy laws and take responsible civil actions against parties who abuse the law or seek to defraud the bankruptcy system**
- b. **Ensure management and professional accountability, compliance with the Bankruptcy Code and prompt disposition of chapter 11 bankruptcy cases**
- c. **Pursue violations of federal criminal laws pertaining to bankruptcy by identifying, evaluating, referring, and providing investigative and prosecutorial support of cases**
- d. **Promote the effectiveness of the bankruptcy system by appointing and supervising private trustees who administer bankruptcy cases expeditiously and maximize the return to creditors**
- e. **Improve accessibility to bankruptcy proceedings by maintaining virtual section 341 meetings of creditors where debtors testify under oath and providing access to free interpreter services at such meetings**
- f. **Promote management excellence through the USTP Workforce and Data Modernization Initiatives**

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

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## **V. Program Increases by Item**

There are no program increases in the FY 2025 request.

## **VII. Exhibits**