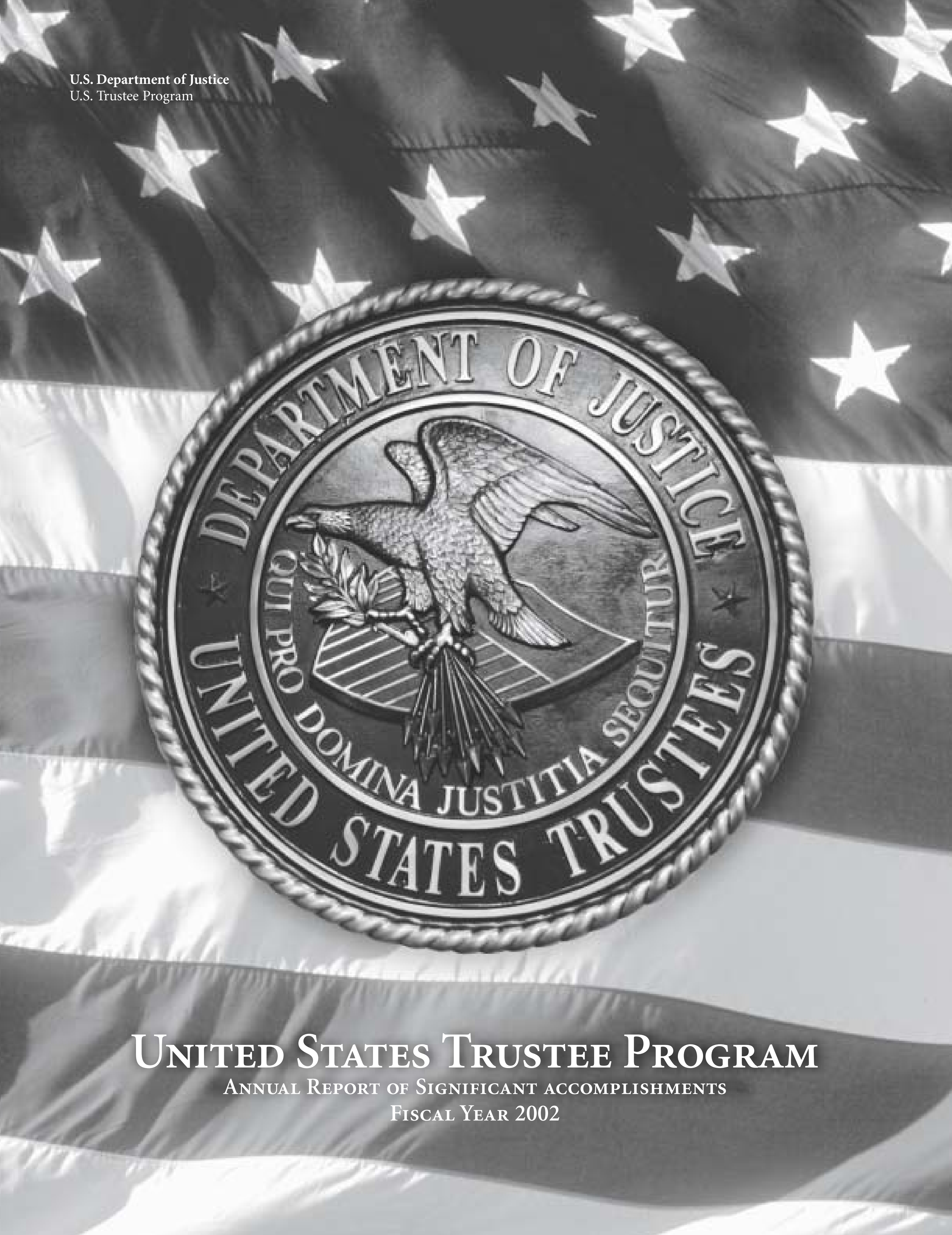
U.S. Department of Justice
U.S. Trustee Program



United States Trustee Program

Annual Report of Significant accomplishments

Fiscal Year 2002

United States Trustee Program

Annual Report of Significant accomplishments

Fiscal Year 2002

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Mission Statement:

The United States Trustee Program acts in the public interest to promote the efficiency and to protect and preserve the integrity of the bankruptcy system. It works to secure the just, speedy, and economical resolution of bankruptcy cases; monitors the conduct of parties and takes action to ensure compliance with applicable laws and procedures; identifies and investigates bankruptcy fraud and abuse; and oversees administrative functions in bankruptcy cases to promote and defend the integrity of the federal bankruptcy system.

JOHN ASHCROFT

MESSAGE FROM ATTORNEY GENERAL JOHN ASHCROFT

This is a time of great challenge for the Justice Department. Our responsibility is nothing less than the defense of freedom from all those who threaten it. Be it terrorists who threaten the security of our nation, or corporate criminals who threaten the integrity of our markets, our challenge is to defend freedom through the law, including the nation's bankruptcy laws.

The bankruptcy system is an integral part of our free market economic system. With 1.5 million consumer and business bankruptcy cases filed last year, the bankruptcy system touches all facets of our economy. And it is the job of the United States Trustee Program to police our bankruptcy system, to enforce the bankruptcy laws, and to seek redress where necessary.

Too often, our bankruptcy system is used as a vehicle to perpetuate a myriad of fraudulent schemes, including tax fraud, health care fraud, federally-insured mortgage fraud, credit card fraud, identity theft, and other crimes. Combating this fraud and abuse is the first priority of the United States Trustee Program. I commend the Program for vigorously implementing the National Civil Enforcement Initiative. Through this Initiative, the Program not only promotes the integrity of the bankruptcy system for honest debtors and creditors alike, but also helps uncover criminal schemes and enterprises.

Lawrence A. Friedman

Message from the Director

I am pleased to present the United States Trustee Program's Annual Report of Significant Accomplishments for Fiscal Year 2002, which details our activities and achievements from October 1, 2001 through September 30, 2002. Fiscal Year 2002 marked a turning point for the U.S. Trustee Program, as we systematically devoted our attention and resources to combating fraud and abuse in the bankruptcy system.

Through our National Civil Enforcement Initiative, in FY 2002 we prevented an estimated $100 million in unsecured debt from being discharged through Chapter 7 liquidations. Our civil enforcement actions also resulted in the disgorgement of over $1.3 million in attorneys' fees in bankruptcy cases and the issuance of more than 160 injunctions against non-lawyer bankruptcy petition preparers.

Attorney General John Ashcroft has expressed his strong support for the U.S. Trustee Program's efforts to protect the integrity of the bankruptcy system, and I could not be more grateful to him. I am also extremely proud of our Program's employees, whose skill, dedication, and professionalism have made our civil enforcement successes possible.

I invite you to read our annual report and to learn more about how the U.S. Trustee Program is working to ensure that the bankruptcy system is efficient, effective, and free from fraud and abuse.

Lawrence A. Friedman, Director
Executive Office for United States Trustees

Executive Summary

The U.S. Trustee Program launched its National Civil Enforcement Initiative in October 2001 and systematically redirected Program resources to combat fraud and abuse in the bankruptcy system. Throughout the fiscal year the Program expanded and fine-tuned the Initiative.

Top priorities were to civilly prosecute debtors who commit fraud or abuse the bankruptcy system and to protect consumer debtors, creditors, and others victimized by those who mislead or misinform debtors, make false representations in connection with a bankruptcy case, or otherwise abuse the bankruptcy process. To those ends, the Program successfully pursued more than 5,000 Chapter 7 debtors through investigations and formal actions to dismiss for "substantial abuse," preventing Chapter 7 discharge of an estimated $59 million of general unsecured debt. Actions filed by the Program to deny or revoke Chapter 7 discharge prevented debtors from discharging approximately $41 million in unsecured debt. The Program obtained disgorgement of more than $1.3 million in attorneys' fees in consumer and business cases, as well as the imposition of almost $534,000 in sanctions against attorneys.

These and other statistics contained in this annual report are derived from a new tracking system the Program developed in FY 2002 to better capture its work efforts and assess performance under the National Civil Enforcement Initiative and other operations. As such, the annual report reflects a snapshot in time, and the statistics on numbers of actions during FY 2002 may not balance because some actions were filed before the reporting period and some were resolved afterward.

The emphasis on civil enforcement was reflected in all major aspects of the Program's operations in FY 2002, including private trustee supervision, training, and public outreach. The Program continued its oversight of private trustees who administer cases under Chapters 7, 12, and 13 of the Bankruptcy Code, while reviewing processes for cost- and time-saving opportunities. It provided civil enforcement training for employees and engaged in outreach activities that emphasized working with others to combat fraud and abuse in the bankruptcy system.

Even as the Program increased its civil enforcement actions, it continued to refer criminal activity to the U.S. Attorneys and other law enforcement agencies and to assist in prosecuting criminal violations of the bankruptcy laws. Program personnel assisted law enforcement authorities in their investigation of bankruptcy crimes, provided information and training about bankruptcy crimes, and prosecuted some cases as Special Assistant U.S. Attorneys.

The Program also carried out its responsibility to ensure that Chapter 11 business reorganizations move through the bankruptcy system in a timely and efficient manner. FY 2002 witnessed the filing of an unprecedented number of complex business reorganizations. The Program handled its duties in these cases as it continued to exercise oversight in the more typical small and medium-sized cases, with the goal of adding transparency to the bankruptcy process and thereby helping to build public confidence in the bankruptcy system.

Chapter 1
U.S. Trustee Program's Mission and Responsibilities



Photo 1: United States Court House, Indianapolis
Photo 2: Lawrence Friedman, Director, EOUST
Photo 3: Judy Hotze, Antonia Darling, and Laurie Luther, Sacramento

Serving the Public Interest

Each year, more than one million individuals and businesses file bankruptcy, making the bankruptcy caseload the largest in the federal court system. In FY 2002, U.S. Trustees processed 1,470,430 new bankruptcy case filings. More than 70 percent of those cases were filed as Chapter 7 liquidations (1,047,969); approximately 28 percent were Chapter 13 repayment plans (410,686); and just under one percent were Chapter 11 reorganizations (11,380). The remaining cases were filed under Chapter 9, Chapter 12, or ancillary to a foreign proceeding.

Federal bankruptcy law offers a fresh start to the honest but unfortunate debtor. By filing a bankruptcy case, the debtor is immediately protected from creditor collection efforts and can obtain a discharge from most debts and/or a readjustment of certain liabilities. In return, the debtor is required to disclose information voluntarily and truthfully regarding all assets and liabilities as well as any pre-bankruptcy transactions to which the debtor may have been a party. If the case is filed under Chapter 7, the debtor is also required to surrender assets to the trustee for liquidation and distribution to creditors, except for assets that are exempt under state or federal law. Chapter 11 and Chapter 13 debtors retain possession of their assets, but pay all or a portion of their debts through plans approved by the court. Once a bankruptcy case is filed, it is critical that it proceed through the system quickly and efficiently to minimize costs of administration and maximize the return to creditors. The U.S. Trustee participates in every case either directly or through trustee oversight.

The U.S. Trustee is a neutral party who litigates issues and provides administrative and regulatory supervision of bankruptcy cases. When the Program was first created in 1978 as a pilot in 18 judicial districts, Congressional leaders described the Program as a "watchdog" to prevent fraud and abuse, enhance compliance with fiduciary standards, eliminate conflicts of interest among attorneys and other professionals, and promote efficient case administration.

Congress expanded the U.S. Trustee Program nationwide in 1986. The Program oversees bankruptcy case administration in 88 federal judicial districts. By statute, judicial districts in Alabama and North Carolina do not participate in the Program; instead, bankruptcy cases in those districts are overseen by administrators appointed by the federal judiciary. The U.S. Trustee Program is organized into 21 regions, with each region headed by a U.S. Trustee who is appointed by the Attorney General. There are 95 regional and field offices.

Major Functions

The U.S. Trustee Program has broad authority in bankruptcy cases, including the legal right to appear and be heard in all matters pertaining to a bankruptcy case.

The Program's primary functions are to:

- **Identify fraud and abuse in the bankruptcy system** and litigate against debtors, creditors, attorneys, and other professionals who violate the Bankruptcy Code and the Rules of Bankruptcy Procedure.

- **Identify and refer federal crimes** to the United States Attorney and assist in prosecuting such cases.

- **Supervise case administration** to ensure that cases proceed without delay, parties adhere to the bankruptcy laws, assets are appropriately distributed to creditors, and only honest debtors have their debts discharged.

- **Appoint and supervise private trustees** who administer bankruptcy estates.

Chapter 2
Administrative Matters and Funding

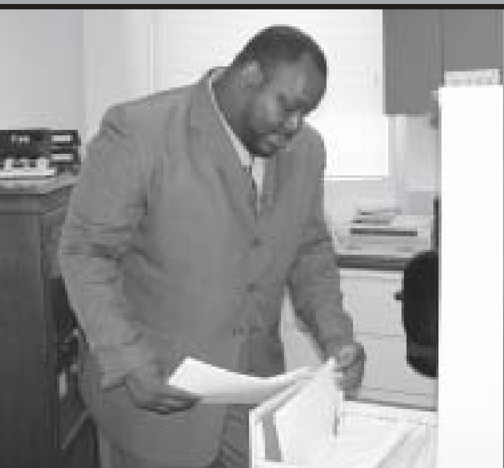


Photo 1: Duane Currie, EOUST
Photo 2: Jean Kopp and Janet Smith, Columbus
Photo 3: Frank Bove, Ilene Perry, and Dan Johnson, Alexandria

Organization and Management

Executive Office for U.S. Trustees

The Executive Office for U.S. Trustees (EOUST) provides comprehensive policy and management direction to the U.S. Trustees and their staff, as well as administrative support and central coordination to the regional and field offices. The EOUST is headed by Director Lawrence Friedman, who reports to the Associate Attorney General in the Justice Department. There are approximately 70 employees in the EOUST in five operational units.

• **The Office of General Counsel** coordinates the Program's litigation activities and provides legal counsel to the Program. It advises U.S. Trustees and Assistant U.S. Trustees to ensure consistency in the Program's legal positions, coordinates responses on significant legal issues, decides whether to take appeals of court decisions, and coordinates with the Justice Department's Civil Division and Solicitor General where necessary.

• **The Office of Review and Oversight** coordinates the supervision of private trustees who administer cases under Chapters 7, 12, and 13. It ensures that trustees satisfy fiduciary standards through the regulation and auditing of trustee financial and administrative operations.

• **The Office of Research and Planning** conducts research and analyzes management and case data. It also contains the Program's information technology unit, which supports the automation activities of the EOUST and the field offices.

• **The Office of Administration** provides a wide range of services for the Program, including budget, personnel, procurement, facilities, travel, and security. It provides administrative guidance and support to the U.S. Trustees and their staffs.

• **The National Bankruptcy Training Institute** develops and provides comprehensive training programs for all Program staff. It is housed within the Justice Department's National Advocacy Center in Columbia, S.C.

Regional Structure and Field Offices

The Program operates through a system of 21 regions defined pursuant to 28 U.S.C. § 581(a). Each region is led by a U.S. Trustee who is appointed by the Attorney General and whose basic authority is conferred under 28 U.S.C. § 586. The U.S. Trustees supervise a cadre of Assistant U.S. Trustees who head 95 field offices located in 46 states. By statute, the six judicial districts in Alabama and North Carolina do not participate in the Program; in those districts, bankruptcy case administration is overseen by a court official called a Bankruptcy Administrator. All states within the jurisdiction of the Program have at least one Program office except for North Dakota and Vermont.

The U.S. Trustees serve under the Director of the EOUST to ensure national uniformity in policies and procedures, while allowing for necessary variances due to local case precedent, practices, and rules. They also represent the Program locally in dealing with other participants in the bankruptcy system, including bankruptcy judges, private trustees, and bankruptcy practitioners.

The role of the U.S. Trustee Program in bankruptcy case administration melds aspects of both law and financial analysis. U.S. Trustees are routinely represented in court by Program trial attorneys and by Assistant U.S. Trustees. Because of the U.S. Trustee's responsibility to prescribe and monitor financial accountability standards for private trustees and Chapter 11 debtors, many Program bankruptcy analysts are Certified Public Accountants. Some are also Certified Fraud

Examiners. At the conclusion of FY 2002, the Program field offices were staffed by 95 Assistant U.S. Trustees, 197 trial attorneys, 202 bankruptcy analysts, 227 paralegals, and 245 administrative, technical, and support staff.

The number of Program offices per region varies, and there are significant differences in the number of employees per office. Approximately 25 percent of the offices have six or fewer employees. The largest office is in Los Angeles with 47 employees in FY 2002, followed by New York City with 29 employees.

The difference in staffing levels reflects the wide variance in caseload among the regions and offices, as well as the types of cases that are filed. For example, Region 21 had responsibility for 179,332 cases filed during FY 2002, while Region 15 had responsibility for 17,955 cases filed during the same period. The Chicago office handled 50,117 cases filed during this period, whereas the Anchorage office was responsible for 1,432 cases. The character of the caseload also differs widely by office. During FY 2002, the Manhattan office handled the largest number of Chapter 11 filings, followed by Wilmington and Chicago; Chicago had the largest number of Chapter 7 filings, followed by Cleveland and Los Angeles; and Atlanta and Memphis had the largest number of Chapter 13 filings.

Budget and Appropriations

The U.S. Trustee Program is funded primarily through fees assessed against debtors who file bankruptcy. No general revenues are appropriated to support the Program.

Within this funding structure, the Program has two principal sources of revenue. First, each debtor pays a filing fee in an amount set under 28 U.S.C. § 1930(a)(1)-(5). Pursuant to a statutory formula, the fees are allocated among the Program, the U.S. Treasury, the court system, and the Chapter 7 trustees. Second, the Program receives quarterly fees from each Chapter 11 debtor throughout the life of the Chapter 11 case, as set forth in 28 U.S.C. § 1930(a)(6). In addition to these principal sources of revenue, smaller amounts of revenue are generated from interest on U.S. Trustee System Fund balances and investments in Treasury notes and bills, Chapter 7 case administration receipts, and excess operating reserves of Chapters 12 and 13 trustees.

Funds allocated to the Program are deposited into the U.S. Trustee System Fund, which is a government trust fund. Congress makes annual appropriations for the Program from this fund, and revenues in excess of the amount appropriated by Congress remain in the fund. If fee collections fall short of the amount Congress appropriated, the Program may withdraw monies from the U.S. Trustee System Fund.

The Program's appropriation for FY 2002 totaled $147 million, with 1,198 authorized positions. Approximately 84 percent of the budget was needed to cover costs relating to personnel and facilities. Costs associated with facilities include rent for the offices and for approximately 450 meeting rooms where the first meetings of the debtors and creditors are held as required under 11 U.S.C. § 341.

Government Performance and Results Act

At the Department of Justice, performance planning and reporting is incorporated into the budget process. Performance information is vital to making resource allocation decisions. This is the heart of the Government Performance and Results Act of 1993 (GPRA). To comply with GPRA, the Program established four strategic goals:

- **Provide administrative support** to move cases effectively and efficiently through the bankruptcy process.

- **Ensure that parties adhere to the standards of the law** by policing for embezzlement, fraud, and other abuses.

- **Maximize the return** of estate assets to creditors.

- **Provide accurate and thorough information** about the operations of the bankruptcy system.

These goals are stated and further explained in the Department of Justice's FY 2001-2006 Strategic Plan, which sets forth as Goal Seven: "Protect the Federal Judiciary and Provide Critical Support to the Federal Justice System to Ensure It Operates Effectively." Objective 7.4 of the Strategic Plan is to protect the integrity and ensure the effective operation of the nation's bankruptcy system.

Consistent with the President's Management Agenda, and as part of the Department's strategic planning process, the Program is actively working to revise the GPRA measures to reflect our emerging initiatives, including the National Civil Enforcement Initiative that commenced on October 1, 2001. Through the Initiative, the Program is making a concerted national effort to use existing enforcement tools to accomplish tangible results and improvements in bankruptcy case administration. The Program has developed systems to measure Program performance in these areas. By focusing resources on these priorities, the Program is able to address many of the concerns that have been at the forefront of debate before Congress and in other public venues, and quantify the impact of the Program's efforts upon the bankruptcy system.

Chapter 3
National Civil Enforcement Initiative



Photo 1: B. Amon James, Alexandria
Photo 2: Antonia Darling, Sacramento and Mark Redmiles, EOUST
Photo 3: Donna Tamanaha, Sacramento

One of the U.S. Trustee Program's most critical responsibilities is to combat fraud and abuse in the bankruptcy system. In October 2001 the Program launched a National Civil Enforcement Initiative to focus its resources more specifically upon combating fraud and abuse in the bankruptcy system. This effort was undertaken to respond to mounting public concern that the bankruptcy system was being abused and that more should be done to protect the system by identifying and taking action against wrongdoers. The effort was a natural outgrowth of the Program's longstanding commitment to tackling fraud and abuse, improving the effectiveness of bankruptcy administration, and bolstering public confidence in the bankruptcy system.

Top priorities of the Civil Enforcement Initiative are to:

- Civilly prosecute debtors who commit fraud or abuse the bankruptcy system.

- Protect consumer debtors, creditors, and others who are victimized by those who mislead or misinform debtors, make false representations in connection with a bankruptcy case, or otherwise abuse the bankruptcy process.

Director Friedman appointed two experienced Program litigators as National Civil Enforcement Coordinators to take the lead in civil enforcement activities. Antonia Darling, Assistant U.S. Trustee for the Sacramento office, and Mark Redmiles, Trial Attorney in the EOUST's Office of General Counsel, direct the Program's national effort to identify, investigate, and seek civil remedies for bankruptcy fraud and abuse. They also lead working groups that focus upon multi-jurisdictional civil enforcement concerns, as well as the Civil Enforcement Resource Team, a group of experienced Program attorneys, bankruptcy analysts, and paralegals from across the country who provide guidance and direction on best practices in individual cases. Resource Team members are available to offer advice, training, and sample pleadings or other documents; assist with discovery and drafting issues; and act as "second chair" during trial.

As part of its civil enforcement activities, during FY 2002 the Program also field-tested debtor audit procedures it developed to determine the accuracy and veracity of debtors' bankruptcy schedules and statements. Six Program offices participated in this "mini-pilot" test.

The mini-pilot teams reviewed more than 4,000 Chapter 7 petitions filed during a two-week period in August 2002. To test the proposed audit procedures, cases were selected both randomly and based on certain criteria. Twenty-four audits were conducted. The range of material findings included a debtor who listed her non-debtor spouse's debts and failed to disclose his prior bankruptcies; a debtor who allegedly used multiple names and Social Security numbers; and debtors who failed to report or under-reported their assets and income. Based on these results, the Program plans to conduct a full pilot test in FY 2003 using outside contractors.

Civil Enforcement Actions

The U.S. Trustee Program's broad statutory powers to combat bankruptcy fraud and abuse are carried out through a variety of civil enforcement actions, including actions to:

- Dismiss abusive filings.
- Deny discharges sought by dishonest and ineligible debtors.
- Limit improper refilings by debtors.
- Deter identity fraud in bankruptcy.

Art Marquis

"A collateral effect of our Section 707(b) project was the 'cleaning up' of inaccurate bankruptcy filings, which have been a major problem in our district. When we became more aggressive with our Section 707(b) motions, typical responses were 'Oh, I forgot to put down this expense,' or 'Well, I don't really earn that much.' Even in cases where we did not prevail on the Section 707(b) motion, we were often able to address the inaccurate filings by obtaining sanctions against the debtors or their counsel."

Art Marquis,
Assistant U.S. Trustee,
Santa Ana

- Curb unfair practices by attorneys and creditors.
- Sanction unscrupulous bankruptcy petition preparers and scam operators.

Dismissal for "Substantial Abuse"

Chapter 7 is designed to give a fresh start to the honest but unfortunate debtor by granting the debtor a bankruptcy discharge. The bankruptcy discharge releases the debtor from personal liability for payment of certain debts and prevents creditors from taking any action to collect those debts.

However, a Chapter 7 consumer case may be dismissed under 11 U.S.C. § 707(b) for "substantial abuse." The term "substantial abuse" is not defined, but under case law it is generally determined based upon a consideration of the totality of a debtor's circumstances including, most often, the debtor's financial ability to repay creditors. For example, a high income Chapter 7 debtor who spends large sums on luxury goods and services may be subject to a motion to dismiss for substantial abuse under Section 707(b) if the debtor can otherwise repay creditors outside of bankruptcy or through a Chapter 13 repayment plan. The U.S. Trustee is the only party who can file a substantial abuse motion; in addition, the court can do so on its own motion.

In FY 2002, U.S. Trustees filed approximately 2,750 substantial abuse motions. During FY 2002, approximately 1,400 substantial abuse motions were either granted by bankruptcy courts or resulted in the voluntary conversion of Chapter 7 debtors to Chapter 13. Further, as a result of U.S. Trustee informal investigations, debtors either voluntarily converted to Chapter 13 or provided additional information to support their Chapter 7 filings in more than 3,800 cases, without the necessity of formal motions or litigation. These figures reflect a snapshot in time; for example, the numbers of motions filed and motions decided during FY 2002 may not match because some were filed before the reporting period and some were decided afterward.

In the aggregate, U.S. Trustees successfully pursued over 5,000 debtors through investigations and formal actions, and prevented the immediate discharge in Chapter 7 of more than $59 million of general unsecured debt. This amount was calculated by multiplying the average amount of unsecured debt in Chapter 7 no-asset cases (cases where no assets are collected and distributed) by the number of motions granted.

Examples of actions by the Program include the following:

- A Director's Award for Civil Enforcement was awarded to the Santa Ana office of the U.S. Trustee for the Section 707(b) "means-testing" project it developed and conducted after the Civil Enforcement Initiative was announced. The project's goals were to: focus Section 707(b) actions upon high income debtors with excessive expenses; familiarize the office and the local practitioners and judges with the concept of means-testing and the Internal Revenue Service's financial collection standards; develop objective criteria for determining whether debtors' expenses are reasonable; and establish review procedures that would dovetail with the requirements of pending bankruptcy reform legislation. For example, the U.S. Trustee's motion to dismiss for substantial abuse was granted by the Bankruptcy Court for the Central District of California in a case where the debtor sought to discharge $188,000 in unsecured debt while spending more than $10,000 a month on expenses. The debtor paid $4,500 per month on the mortgage for her house in San Juan Capistrano, and $2,500 per month on the rent for her apartment in Silicon Valley. The U.S. Trustee argued it was neither reasonable nor necessary to the debtor's maintenance or support for her to

DIANA ADAMS

spend $7,000 a month for two homes. The court found that if the debtor surrendered her Orange County house she could fund a Chapter 13 plan.

• A Chapter 7 debtor in Dallas agreed to dismiss her case, preventing discharge of $122,527 in consumer credit card debt, after the U.S. Trustee filed a motion to dismiss for substantial abuse and completed discovery. The debtor, a commercial airline pilot, earned $11,500 per month and paid $3,100 per month on the mortgage for her $385,000 home. Just before filing, she bought a $50,000 Mercedes to replace her repossessed $90,000 Mercedes.

• The Bankruptcy Court for the Southern District of California granted the San Diego office's motion to dismiss for substantial abuse where the debtors understated their monthly income by approximately $2,500 and listed excessive expenses. Subtracting adjusted monthly expenses from actual monthly income revealed the debtors could fund a Chapter 13 plan resulting in 100 percent payment to unsecured creditors within 36 months.

• The Woodland Hills office successfully sought dismissal of a Chapter 7 case filed by a debtor in the Central District of California who accumulated at least $283,075 in credit card debt through the use of 36 credit cards, when he had no means to repay the debt.

• Responding to an inquiry by the Tampa office, Chapter 7 debtor spouses converted their case to Chapter 13. The debtors had a combined monthly income of $7,000, and a $6,756 monthly budget that included $965 for an automobile. Their schedules listed secured debt of $157,000 and unsecured debt of $350,000, which consisted of $200,000 in credit card debt and $150,000 owed to individuals for personal loans. Their banking records showed that one spouse regularly withdrew hundreds of dollars a month from Automatic Teller Machines at local casinos.

• The Brooklyn office received a Director's Award for its increased efforts to address abuse in Chapter 7. In October 2001 the office was one of the first to implement new civil enforcement methods. At that time it began reviewing every Chapter 7 petition for abuse, using a simple set of criteria involving the amount of debts and assets. In addition, based on this enhanced review the office referred a number of cases to the U.S. Attorney for criminal investigation and potential prosecution.

• The Tulsa office's motion to dismiss for substantial abuse was granted by the Bankruptcy Court for the Eastern District of Oklahoma in a case where the debtors had almost $550 per month in excess income and could repay more than 57 percent of their unsecured debt in a 36-month Chapter 13 plan.

• Based on the actions of the Miami office, a Chapter 7 debtor consented to dismiss his case pending in the Southern District of Florida. The debtor sought to discharge $163,744 in unsecured debt while making pension contributions and maintaining excessive monthly expenses, including $232 in lottery tickets per month.

Denial or Revocation of Discharge

The primary reason an individual files for bankruptcy is to obtain a discharge of his or her debts. In a Chapter 7 case, the discharge is usually issued 60 days after the first date set for a meeting of creditors, unless a complaint objecting to the debtor's discharge has been filed.

A bankruptcy discharge may be denied if the debtor concealed assets or engaged in other improper conduct, including withholding information on the debtor's bankruptcy petition, schedules, or statement of financial affairs. In addition, a previously granted discharge may be revoked as a result of information discovered after the discharge was entered. These actions are time-consuming

"Once you begin looking closely at a case, you never know what you might find. For example, the review of petitions and documents that have been produced in response to discovery requests has led to the discovery of substantial undisclosed assets that can be liquidated by trustees for the benefit of creditors. In some cases this review has also led to the discovery of attorney misconduct."

Diana Adams, Assistant U.S. Trustee, Brooklyn

David Quinn

"This was by far the most complicated bankruptcy investigation I had conducted for the Program, which I joined after working as a U.S. Postal Inspector and a criminal investigator for the U.S. Attorney's office in New York City. We started by interviewing the debtor and moved on to interviewing his vendors. Later, using information obtained via subpoena, I developed spreadsheets showing over 3,000 bank account entries and 600 credit card entries. We used these to track the debtor's purchases and finances and create a time line of his activities."

David Quinn, Bankruptcy Analyst, Providence

and require significant office resources, but provide one of the most potent remedies available against debtors who undermine the integrity of the bankruptcy system. Most often, U.S. Trustees file complaints seeking denial or revocation of discharge under 11 U.S.C. § 727 to address egregious actions such as destroying, mutilating, or concealing property to hinder or defraud a creditor or a trustee; knowingly making a false oath; or refusing to obey a court order.

In FY 2002, 524 actions seeking denial or revocation of the debtor's discharge were filed. Discharges were denied in 308 cases, or 93.6 percent of the cases that were resolved either by judicial determination or by the debtor's voluntary waiver of discharge after the action was filed. Discharges were granted in 21 cases. In addition, in some cases criminal proceedings were instituted against the debtors based on the same conduct that led to denial or revocation of discharge. As with Section 707(b), the numbers of Section 727 actions filed and decided during FY 2002 may not match because some were filed before the reporting period and some were decided afterward.

As a result of U.S. Trustee actions pursuant to Section 727, debtors were prevented from discharging around $41 million in unsecured debt in FY 2002. Discharge actions brought by the Program include the following:

- In a Chapter 7 case, the Bankruptcy Court for the Eastern District of Texas granted the Tyler office's objection to a proposed settlement of a discharge action filed by the Chapter 7 trustee. The debtor listed $3.29 million in debts and no assets on his bankruptcy schedules, but the trustee alleged that he failed to disclose several corporations and bank accounts, provide a satisfactory explanation for the loss of assets, and preserve his financial information. After the court denied approval of the proposed settlement, the debtor waived discharge in lieu of proceeding to trial.

- In Providence, the U.S. Trustee entered into a stipulation for judgment with a debtor in the District of Rhode Island to deny discharge of $330,000 in unsecured debt, most of which related to a grocery store the debtor operated for 10 months. The U.S. Trustee's investigation revealed the debtor's pattern of submitting false credit applications to vendors to get his business "up and running," and then stopping payments on checks after products were delivered to his store. A review of bank and credit card records subpoenaed during the investigation revealed over $23,000 in cash advances received during a six-month period, along with thousands of dollars in charges for furniture, clothing, jewelry, household goods, travel expenses, and restaurant dining.

- The U.S. Trustee, a Chapter 7 trustee, and a debtor entered into an agreement denying discharge after the debtor failed to disclose significant information in his case pending in the Western District of Kentucky. In their complaint to deny discharge, the Louisville office and the private trustee alleged that the debtor failed to disclose that he transferred his one-half interest in a Florida house to his son approximately seven days before filing bankruptcy; failed to list the transfer of his stock in a closely held telecommunications company to his daughter within one year before filing; and failed to account for the disappearance of $1.125 million in assets, including $300,000 in personal property, $425,000 in notes receivable, and $400,000 in equine holdings. The debtor sought to discharge almost $1.8 million in unsecured debt, along with $795,175 in secured debt.

- In Cleveland the U.S. Trustee obtained denial of discharge after a trial in the Bankruptcy Court for the Northern District of Ohio. The debtor sought to discharge approximately $105,000 in debt in his Chapter 7 case, but he failed to reveal that he had $20,000 in cash hidden in a drawer at home. The Chapter 7 trustee learned about the concealed cash just before the debtor's Section 341 meeting.

Kevin Dempsey

• Based on a complaint filed by the Sioux Falls office, the Bankruptcy Court for the District of North Dakota denied discharge to a debtor who prepared his petition using advice set forth on an Internet site, omitting his legal name and his Social Security number from the petition. He later amended the petition to include his name and Social Security number, but the court held that he made a false oath when he signed the original petition knowing it was incomplete. The court stated that "the Debtor's falsity cannot be condoned," regardless of whether his false oath caused any specific monetary harm. The court's order resulted in non-discharge of $47,469 in unsecured debt.

• The Bankruptcy Court for the Central District of California entered a default judgment denying discharge to a debtor who listed $1,625 of personal property and $617,267 of credit card debt on his bankruptcy schedules. When an attorney from the Santa Ana office examined the debtor at the Section 341 meeting, he said he lost over $100,000 through gambling; the credit card expenditures were for living expenses, gifts, and calls to his home country; and his former roommate took more than $60,000 in appliances and furniture from his apartment without authorization. The U.S. Trustee subpoenaed credit card records and learned that in one 30-day period the debtor went to a different warehouse store almost every day, spending $62,347. Based on the debtor's false oaths, inability to explain the disposition of estate property, and failure to keep records, the U.S. Trustee filed the complaint seeking to deny discharge.

• The Bankruptcy Court for the Southern District of Indiana approved a debtor's consent to revocation of his discharge, based on actions by the Indianapolis office. Almost one year after the debtor's discharge, his former spouse informed the U.S. Trustee that he had failed to disclose assets. The U.S. Trustee obtained an extension of time to file a complaint to revoke discharge, conducted discovery, and filed a denial of discharge complaint that cited the debtor's numerous false oaths and other misconduct, including his failure to disclose part ownership of two airplanes as well as a pre-bankruptcy transfer of real estate to his daughter.

• A debtor attempting to discharge more than $1.2 million in debt was denied discharge following a trial before the Bankruptcy Court for the District of Nevada. The debtor failed to disclose a revocable trust into which he had transferred his residence, personal property, and summer home. After the trustee discovered the transfers, the debtor finally disclosed the trust in his fourth amended schedules. The Las Vegas office filed the complaint to deny discharge, and the Chapter 7 trustee ultimately realized $392,000 for the estate from the sale of the summer home.

• In Portland, Ore., a debtor who allegedly sent $6 million of his customers' money to Nigeria over several years agreed to the entry of a judgment denying discharge of more than $4.2 million in unsecured debt, based on a complaint filed by the U.S. Trustee. The U.S. Trustee's investigation suggested that the cattle feedlot operator used a detailed set of duplicate books to hide losses, double billed his customers, and moved monies among their accounts. The debtor continued to send funds to Nigeria even after he had filed bankruptcy and had been repeatedly informed that the Nigerian "investment opportunity" was a hoax. The U.S. Trustee objected to his discharge on several grounds, including transferring estate funds with intent to hinder, delay, or defraud creditors; failing to disclose pre-petition transfers in his bankruptcy schedules; making a false oath at his Section 341 meeting; failing to disclose post-petition transfers on his monthly operating reports; and concealing and falsifying the records of his related corporations.

"We receive a considerable amount of information about debtors from ex-spouses, ex-business partners, and other individuals having some relationship to the debtor. Often, as in this case, information from these sources helps us obtain results such as denial or revocation of the bankruptcy discharge. By revealing assets, such information can also result in significant distributions to creditors when it originally appeared they would receive nothing."

Kevin Dempsey,
Assistant U.S. Trustee,
Indianapolis

Joe Mack

"When honest, hard-working individuals who have been wronged by unscrupulous and illegal activity present themselves to our office, I take a special interest in trying to help them. I guess you might say I don't like to see bad things happen to good people. In this case, the victim was able to get his credit status restored, after advising the credit reporting services that his identity had been stolen and providing them with copies of the court order we obtained for him."

Marion "Joe" Mack, Assistant U.S. Trustee, Detroit

Identity Fraud

Bankruptcy-related identity fraud can take various forms. One of the least complex methods of engaging in bankruptcy-related identity fraud is to incur debt under an assumed identity and then file bankruptcy under the false name and/or Social Security number. Sometimes the name or number is chosen at random; other times it is the name or number of someone known to the filer, such as a parent, sibling, child, spouse, ex-spouse, co-employee, fellow student, or neighbor.

More complicated types of bankruptcy-related identity fraud include: transferring real property into the name of another person and then, to avoid foreclosure on the property, filing for bankruptcy using that person's identity; transferring a partial interest in real property into the name of another person whose bankruptcy case is pending, thereby staying foreclosure on the real property; and using a false Social Security number when identifying oneself as a bankruptcy petition preparer. In extreme cases of identity fraud, a perpetrator may wholly co-opt another person's identity–obtaining driver's and professional licenses, obtaining employment, applying for apartments, taking out home and automobile loans, applying for credit cards, and even receiving traffic tickets and warrants under the false identity. The false identity is initially used to obtain employment and subsequently to establish credit; ultimately, the perpetrator files for bankruptcy using the false name and number to discharge the debts he or she incurred.

If a false name or Social Security number on a bankruptcy petition matches another person's, that person may have a bankruptcy filing placed on his or her credit record, with damaging consequences. Even if the name or number does not match anyone else's, the bankruptcy court record will be inaccurate and the true filer's credit record will not reflect the bankruptcy filing. Similarly, the debtor may have received a prior bankruptcy discharge under another identity and therefore may not be eligible for a discharge. Depending upon the circumstances, the U.S. Trustee Program may pursue one or more civil remedies for identity fraud, including dismissal of the case, denial of discharge, and a court finding that the named person did not file the case or authorize the filing.

FY 2002 marked the nationwide rollout of the Program's Debtor Identity Initiative, following a pilot project conducted in the first half of 2001 that required all debtors in 18 judicial districts to produce documents at the Section 341 meeting to confirm their names and Social Security numbers. Statistics for FY 2002–which included a period before the national rollout was completed–bear out the findings of the pilot project, which detected errors in approximately 1 percent of filed cases. In FY 2002, approximately 8,000 problems relating to debtor name or Social Security number were found through the debtor identification requirement. As a result, more than 6,200 debtors filed amended petitions to correct problems with debtor identification. In addition, U.S. Trustees filed over 1,300 formal actions relating to debtor identification problems, including motions to dismiss, complaints objecting to discharge, and objections to confirmation of Chapter 13 plans.

Sandy Klein

Cases of identity fraud include the following:

• The Detroit office assisted an identity theft victim whose name was falsely used on a Chapter 13 bankruptcy petition. The U.S. Trustee informed the Bankruptcy Court for the Eastern District of Michigan that the bankruptcy case was filed fraudulently, and successfully argued that it should be declared a nullity, as if it were never filed. The U.S. Trustee then provided the victim with a verified copy of the court order to send to the credit reporting services to clear the bankruptcy from his credit record.

• The Sacramento office obtained an injunction barring a debtor from filing bankruptcy for the next 10 years absent prior court approval. The Bankruptcy Court for the Eastern District of California issued the injunction based on the U.S. Trustee's showing that, over a 25-year period, the debtor filed at least 15 prior bankruptcy cases in the Eastern and Northern Districts of California, using four names and two Social Security numbers.

• After a Philadelphia debtor placed her eight-year-old daughter into bankruptcy to delay foreclosure on a property, the U.S. Trustee obtained an order from the Bankruptcy Court for the Eastern District of Pennsylvania barring anyone from refiling a bankruptcy case involving that property. The child's mother had transferred the property to the child and filed bankruptcy in the child's name, using a false Social Security number, after a court in a different jurisdiction barred the mother from refiling for bankruptcy in that district. In the order obtained by the Philadelphia office, the court ordered the mother to correct the false number on the bankruptcy petition and notify the three credit reporting agencies about the false filing.

• The Bankruptcy Court for the Northern District of Georgia denied the Chapter 7 discharge of a debtor, based on the Atlanta office's allegations that she used eight or more incorrect Social Security numbers and nine different names in at least six bankruptcy cases filed since 1992. The debtor also provided false, incomplete, and misleading information in her petition, schedules, and statement of financial affairs, and at her Section 341 meeting of creditors.

• In Newark, the U.S. Trustee helped an identity theft victim remove a false bankruptcy filing from his credit report. The North Carolina resident contacted the Bankruptcy Court for the District of New Jersey to report that a Chapter 13 petition had been filed in that district under his name and Social Security number. After the bankruptcy court referred the matter to the U.S. Trustee, an investigation revealed that the victim's father stole his identity to file the petition without his knowledge or consent. Because the victim was awaiting approval of a mortgage, the U.S. Trustee helped him by obtaining court records and speaking with his lender and various credit reporting agencies.

In addition to pursuing civil and criminal remedies in bankruptcy, the U.S. Trustee Program is working with other components in the Department of Justice to explore new and creative ways to combat identity theft. In FY 2002, the Los Angeles offices of the U.S. Trustee and the U.S. Attorney joined forces to develop a free community outreach program to educate consumers on how to recognize, avoid, and redress identity theft. The project was initiated by Special Assistant U.S. Attorney Sandy Klein, who works closely with both offices prosecuting bankruptcy crimes. With encouragement from Region 16 U.S. Trustee Maureen Tighe, she developed a 25-minute program that includes a slide show and resource guide

"My grandmother often received calls and letters congratulating her as a prize winner and asking for her Social Security number and birth date to confirm her 'winnings.' She was so disappointed when I explained these were scams to obtain her personal information. I developed this presentation to help senior citizens like her, who might not understand how easily their identities could be stolen. Then U.S. Trustee Maureen Tighe suggested that the program could benefit many other groups, so I expanded it to help anyone who wants to learn about identity theft."

Sandy Klein,
Special Assistant
U.S. Attorney,
Los Angeles

Kelly Sweeney

"It was tremendously satisfying to see justice done in this case. One of the most personally rewarding moments was when I observed the gratitude on one debtor's face as we gave him the check for the profit on the sale of his home. He had been living in a hotel with his son because he did not even have enough money to pay a security deposit on an apartment. It was as if we had given him a million dollars."

Kelly Sweeney,
Trial Attorney,
Denver

containing information about federal resources available nationwide for identity theft victims. The program is also available as a videotape to be shown by organizations such as schools, seniors groups, business groups, and churches. Free copies are available from the U.S. Attorney for the Central District of California.

Serial Filings

Some debtors abuse the bankruptcy laws by repeatedly filing bankruptcy solely for the purpose of frustrating creditors' attempts to obtain payment or to foreclose on real property. Usually these debtors do not complete their cases, but remain in bankruptcy just long enough to obtain the automatic stay's temporary protection from collection activity by creditors. The Bankruptcy Code prohibits a debtor from refiling within 180 days if the bankruptcy court dismissed the prior case because the debtor failed to abide by court orders, failed to appear before the court, or requested voluntary dismissal after seeking relief from stay.

Some serial filings are made as part of a larger scheme, such as a rent-skimming operation run by a perpetrator who acquires title to multiple properties with no intention of paying the mortgages. The perpetrator collects the rents and then repeatedly files bankruptcy to stall foreclosure and allow the scheme to continue.

The U.S. Trustee monitors its own data bases as well as court records for evidence of abusive refiling, and seeks dismissal of the case or denial of discharge. Examples of cases include the following:

- On motion by the U.S. Trustee in Denver, the Bankruptcy Court for the District of Colorado dismissed the debtor's 11th bankruptcy case in 10 years, ordering all existing debts non-dischargeable in any future case. The debtor followed a pattern of filing cases with inadequate disclosure and seeking to pay the filing fees in installments, then failing to augment her filing or pay the delinquent fee installments. Repeatedly, her cases were automatically dismissed for these deficiencies, but not until she enjoyed the benefit of the automatic stay. The U.S. Trustee filed a motion seeking to avoid the automatic dismissal of the latest case and compelling the debtor to appear at a hearing. The U.S. Trustee also obtained an order for her apprehension under the Rules of Bankruptcy Procedure after she failed to appear for the hearing. When she voluntarily appeared in lieu of being apprehended by the U.S. Marshal, she admitted that her conduct had abused the bankruptcy system.

- In Boston the U.S. Trustee successfully sought to deny the Chapter 7 discharge of a home improvement contractor, who, with his family members, had filed at least 15 consumer bankruptcy cases since 1991. The Bankruptcy Court for the District of Massachusetts prevented the debtor from discharging approximately $281,793 in debts, pursuant to a Bankruptcy Code provision that addresses the failure to preserve financial records. The bankruptcy cases were apparently filed to use the automatic stay to evade claims from homeowners, many of them senior citizens, who were dissatisfied with the contractor's work. Separately, the debtor was indicted and ultimately pleaded guilty to 36 violations of the Massachusetts law governing home improvement contractors.

Attorney Misconduct

Lawyers who engage in unethical conduct or provide substandard representation harm their clients and undermine the integrity of the bankruptcy system. The U.S. Trustee monitors attorney conduct and adherence to professional standards, and takes action against inadequate representation and unlawful activity by counsel. Civil enforcement actions by the U.S. Trustee include asking the

FRED BAKER

court to temporarily or permanently bar the attorney from appearing in bankruptcy cases and coordinating with state bar associations as they pursue attorney disciplinary proceedings. Enforcement actions also include requesting disgorgement of debtors' attorneys' fees under 11 U.S.C. § 329 and seeking sanctions or similar remedies.

In FY 2002, U.S. Trustees pursued 653 actions seeking disgorgement of debtors' attorneys' fees, resulting in disgorgement of more than $1.3 million in both consumer and business cases. During the same period, U.S. Trustees pursued 243 other actions for attorney misconduct, resulting in the imposition of $533,813 in sanctions, and referred approximately 75 attorneys to state bar associations or other disciplinary boards. These are examples of Program actions:

• A trial attorney in the U.S. Trustee's Denver office received a Director's Special Commendation for Exceptional Achievement in Civil Enforcement for her work resulting in a $20,000 sanction against an attorney for his misconduct in a series of Chapter 7 and Chapter 13 cases. The U.S. Trustee received a referral from a Chapter 7 trustee after the attorney appeared at a Section 341 meeting and claimed a lien on his former client's television set as security for his fees. Through further investigation and discovery, it was determined that in more than 90 cases the attorney had required his debtor clients to sign a statement granting him an attorneys' lien that he recorded to secure fee payment. In five cases, after his clients filed bankruptcy he redeemed their property from foreclosure, obtained title to it, and sold it for a profit in excess of his fees–in one case, more than a $50,000 profit. The attorney failed to disclose these liens or the fee arrangement in any documents filed with the court. The Bankruptcy Court for the District of Colorado found that, by taking the liens and not disclosing them, he violated the Bankruptcy Code and forfeited any right to compensation. The court ordered him to pay the $20,000 sanction to the U.S. Trustee and the bankruptcy court, disgorge to the debtors and trustee more than $19,000 in fees received in various cases, and disgorge to two debtors the net proceeds from the sales of their homes.

• In Pittsburgh, the U.S. Trustee sought sanctions against a Chapter 7 debtors' attorney whose actions included delaying the filing of numerous cases and using the filing fees for other purposes, significantly overcharging clients, and operating as a front for a law practice run by a non-attorney. The U.S. Trustee obtained an order from the Bankruptcy Court for the Western District of Pennsylvania directing the attorney to disgorge over $200,000 in fees paid by more than 200 clients whose cases he did not file. The U.S. Trustee also obtained a court order barring the attorney from filing new bankruptcy cases, and referred the matter to the Pennsylvania Disciplinary Board, which resulted in the attorney's disbarment.

• The Philadelphia office received a Director's Award for Civil Enforcement for its efforts to address inadequate performance by attorneys for Chapter 7 debtors in the Eastern District of Pennsylvania. The U.S. Trustee's review focused upon three problems with debtors' schedules: "boilerplate" information entered without regard to the individual debtor's circumstances; internally inconsistent information; and missing financial information. The U.S. Trustee's heightened scrutiny yielded noticeable improvements in the quality of filings.

• On motion by the U.S. Trustee in Los Angeles, the Bankruptcy Court for the Central District of California referred an attorney to the bankruptcy court's disciplinary panel for his conduct in a Chapter 7 case. The court found numerous violations of the California Rules of Professional Conduct, such as forming a partnership with a

"Far too often, debtors' attorneys fail to spend the time and effort to ensure that proper disclosure is made in the initial filings with the bankruptcy court. As a result, the court, the U.S. Trustee, creditors, and even the debtor must expend additional resources to determine whether the debtor may receive a bankruptcy discharge. Our civil enforcement efforts are aimed at educating all participants in the bankruptcy process about the costs associated with this lack of care and attention to detail."

Fred Baker,
Senior Assistant
U.S. Trustee,
Philadelphia

Bruce Gering

"The outcome of this case was particularly satisfying because the law firm took the debtors' $1,000 fee in November but didn't file their case until the following March. The firm has since contacted other South Dakota attorneys to represent it locally, but they have all turned it down."

Bruce Gering,
Assistant U.S. Trustee,
Sioux Falls

non-attorney for the practice of law, sharing legal fees with a non-attorney, failing to deposit trust funds into his account, allowing his name to be used in a way that permitted a non-attorney to charge an unconscionable fee, and misrepresenting his compensation arrangement to the court. The court's findings showed that the attorney never met with the debtor; allowed a non-attorney to collect money and deposit it in the non-attorney's account; and, in essence, allowed the non-attorney to use his license with no supervision or client contact. The disciplinary panel suspended the attorney from practicing before the bankruptcy courts in the district for one year.

• Between 1994 and 2002, an attorney was the subject of nine sanctions orders, two judgments of disgorgement, a judgment of contempt, a disgorgement order, two disqualification orders, and a conditional disbarment order in the Bankruptcy Court for the Northern District of California. He initially violated all of the disgorgement judgments and orders, totaling over $190,000, although he ultimately paid the ordered amounts. On the eve of a disbarment trial prosecuted by the Oakland office, the attorney agreed to an order prohibiting him from appearing before the Bankruptcy Court for the Northern District of California. The U.S. Trustee helped the California State Bar bring charges against the attorney, who subsequently resigned from the bar.

• The Oklahoma Supreme Court issued a public censure to an Oklahoma City bankruptcy practitioner, based on his practice of sending his clients to loan companies where they would borrow the funds to pay his fee for bankruptcy services. The Oklahoma City office discovered this practice, as well as the fact that the attorney did not always disclose the fee, list the loans on his clients' bankruptcy schedules, or explain to his clients that the loan was a pre-bankruptcy dischargeable debt. Before his censure, the attorney had agreed with the U.S. Trustee that he would disgorge approximately $9,000 in around 19 bankruptcy cases, stop the loan referral practice, and refrain from practicing bankruptcy law in any court for five years.

• Acting on a motion filed by the U.S. Trustee in Sioux Falls, the Bankruptcy Court for the District of South Dakota required a Chicago law firm that sells bankruptcy services over the Internet nationwide to disgorge all fees received for its involvement in a South Dakota Chapter 7 case. The firm used an Internet connection to elicit information from the debtors; prepared their petition, schedules, and statement of affairs; and sent the documents to a local attorney, who met with the debtors, obtained their signatures on the documents, and accompanied them to the Section 341 meeting. The court found that the firm's services did not benefit the debtors, and that the only benefit conferred was by local counsel. In response to the firm's claim that it performed legal services for the debtors, the court found that its lawyers could not represent debtors in South Dakota because they were not authorized to practice law there.

Bankruptcy Petition Preparers

A bankruptcy petition preparer is a non-attorney who prepares debtors' bankruptcy documents for a fee. Petition preparers are regulated under 11 U.S.C. § 110, which requires, among other things, that they disclose in court filings their identities and the fees they receive. Section 110 also limits the practices that petition preparers may engage in, barring them from activities such as advertising "legal" services, charging excessive fees, collecting clients' payments for court filing fees, or engaging in the unauthorized practice of law. Nonetheless, some petition preparers charge exorbitant rates, fail to make necessary disclosures, and engage in the unauthorized practice of law and other unlawful activities.

Peter Orens

To curb such conduct, U.S. Trustees bring civil actions to obtain orders to disgorge fees paid by clients, impose fines, and prohibit the petition preparers from future activities. In some cases, the U.S. Trustee's enforcement activities are enhanced through the use of a national data base developed in FY 2001 to track bankruptcy petition preparers who are under investigation or have been enjoined or found to engage in unauthorized practices. The data base is particularly important because these individuals often cross state lines to evade detection.

Many of the most egregious abuses in the bankruptcy system are perpetrated by those who prey upon debtors who are in dire financial straits and are not well equipped to scrutinize offers of assistance. Fraudulent schemes take advantage of people facing foreclosure, as well as the lenders to whom they owe their house payments, and can culminate in the preparation and filing of a bankruptcy petition. The scam operator typically solicits clients whose homes are listed in the foreclosure notices and falsely promises to work out the client's mortgage problems for a sizable fee. Instead, the operator either persuades the client to file bankruptcy or places the client in bankruptcy without the client's knowledge. The bankruptcy filing temporarily stops the foreclosure action, but if the client does not proceed with the bankruptcy case, the foreclosure goes forward. As a result of the scam operator's activities, debtors may pay their last dollar, receive worthless services, and still lose their homes. Because mortgage foreclosure scam operators often fill out bankruptcy documents to place their clients in bankruptcy, the Program pursues them through 11 U.S.C. § 110, seeking orders to repay the defrauded debtors, impose substantial fines, and enjoin further unlawful actions.

In FY 2002, U.S. Trustees initiated over 1,150 actions against petition preparers. During the same period, bankruptcy courts granted relief in 732 actions which, in the aggregate, resulted in the imposition of nearly $360,000 in fines and the return of approximately $186,000 in client fees. Over 160 injunctions were issued as a result of actions filed by U.S. Trustee offices during FY 2002.

Examples of Program actions against petition preparers include:

- In a matter pursued by the Alexandria office, the Bankruptcy Court for the District of Columbia enjoined an individual in the District of Columbia from serving as a bankruptcy petition preparer throughout the United States, either personally or through any entity. The court also fined the individual $12,000 for multiple violations of Section 110; ordered him to disgorge more than $4,000 in fees received from debtors; and ordered him to pay fees to the U.S. Trustee. The individual held himself out as a "foreclosure specialist" and assisted others with filing bankruptcy petitions under Chapter 13, but his assistance was not disclosed on the petitions. He often charged exorbitant fees ranging from $1,000 to $3,500 for his assistance; in addition, he frequently attempted to purchase clients' homes for below market value and then rent the homes back to the clients.

- In a series of actions against a bankruptcy petition mill, the Woodland Hills office obtained a permanent injunction and order for fines and disgorgement against the petition mill, its principal, and petition preparers who worked there. Between February 2002 and June 2002, the U.S. Trustee filed 34 actions against the petition mill, with the Woodland Hills office alone obtaining over $25,000 in fines and over $6,000 in disgorgement

"We performed two Bankruptcy Rule 2004 examinations of the individual to determine more accurately the extent and scope of his involvement in several bankruptcy cases. I assisted the Trial Attorney by preparing most of the questions. In the first Rule 2004 exam the individual pleaded ignorance of the requirements of Section 110. At the end of the exam I gave him a copy of the statute, so it didn't play very well when he again pleaded ignorance during his second Rule 2004 exam."

Peter Orens,
Paralegal Specialist,
Alexandria

Ann Killian

"Our efforts regarding the bankruptcy petition preparer demonstrate how, as a nationwide Program, we use tools such as our petition preparer data base to gather information from offices around the country. A Trial Attorney in our Peoria office immediately provided us with pleadings and other useful information relating to that office's actions against the petition preparer, which we were able to show the court and use to stop her activities in our jurisdiction."

Ann Killian,
Paralegal Specialist,
San Antonio

orders against the entity. The petition mill advertised $99 bankruptcy filings, but used high pressure sales tactics to charge up to $650 per petition to low income debtors, many of whom were elderly or disabled. Its petition preparers also failed to disclose their Social Security numbers on the petitions, apparently forged an attorney's name on petitions, improperly collected cash from debtors for court filing fees, falsely represented there was an attorney on the premises, engaged in the unlawful practice of law by giving legal advice, and failed to comply with prior court orders for violations of Section 110.

• The Bankruptcy Court for the Southern District of Florida awarded at least 225 debtors a total of more than $52,200 in fees charged by an entity that prepared bankruptcy petitions. Along with two Chapter 7 trustees, the Miami office argued that the entity engaged in a variety of violations of Section 110, including overcharging for services and failing to give debtors a copy of the documents presented for their signature.

• The Fresno office obtained a judgment against two bankruptcy petition preparers in the Bankruptcy Court for the Eastern District of California, permanently enjoining them from acting as petition preparers or giving legal advice; fining them $11,000 and ordering fee disgorgement; and ordering them to provide the U.S. Trustee with an accounting of income derived from bankruptcy-related services, including fees received or shared with attorneys. The U.S. Trustee filed a complaint in response to misconduct by the petition preparers in at least 64 bankruptcy cases. In 41 cases, they shared fees with two attorneys, pursuant to undisclosed agreements whereby the attorneys solicited clients, gave legal advice regarding bankruptcy, and prepared bankruptcy documents. In 22 cases, they prepared bankruptcy documents but gave false preparer names, false Social Security numbers, and false fee disclosures.

• A bankruptcy petition preparer who operated an Internet service was held in civil contempt of court and sanctioned $10,000 by the Bankruptcy Court for the Western District of Texas after the San Antonio office investigated her fees and practices. The investigation revealed that the petition preparer engaged in the unauthorized practice of law by choosing debtors' property exemptions, completing their bankruptcy schedules, and preparing court pleadings and Chapter 13 plans. She also charged six times the amount that petition preparers were allowed to charge in the Western District. The contempt and sanctions orders arose from her continued failure to obey a prior bankruptcy court order that enjoined her from petition preparation and directed her to repay debtors' fees. The U.S. Trustees' offices in Cleveland and Peoria also obtained orders against the petition preparer in their judicial districts.

• The Boise office obtained a judgment against a bankruptcy petition preparer who was the local franchisee for a national business entity. The Bankruptcy Court for the District of Idaho ruled that the petition preparer had violated Section 110 in several ways. Her use of the national entity's 20-page pamphlet outlining the Chapter 7 bankruptcy procedure constituted the unauthorized practice of law and amounted to a deceptive and unfair practice. In addition, her practice of advertising that, through the national entity, a supervising attorney was available to chat about general questions was unfair and deceptive because the attorney could provide little benefit to the prospective debtor without providing legal advice. In addition to sanctioning the petition preparer, the court warned the national entity that its method of doing business likely placed it within the definition of a bankruptcy petition preparer and that it was violating Section 110.

Patrick Tinker

• The Bankruptcy Court for the Central District of California approved a stipulation under which an individual was permanently barred from acting as a bankruptcy petition preparer, sanctioned, and ordered to disgorge fees, after the Santa Ana office discovered she had used her three-year-old daughter's name (here referred to as "Jane Doe") on petitions she prepared. Previously, on motion of the U.S. Trustee, bankruptcy petition preparer "Jane Doe" had been sanctioned and enjoined from petition preparation in a particular case. At that time, however, the U.S. Trustee continued its investigation because there was some question whether "Jane Doe" was a real person. After searching public records, including county birth records, the U.S. Trustee linked the case listing petition preparer "Jane Doe" to the individual, who was a law school graduate and a previously sanctioned preparer. The U.S. Trustee discovered that the individual was using her daughter's name instead of her own name on documents she prepared.

• The Tampa office obtained a permanent injunction barring an individual and an entity from acting as bankruptcy petition preparers, based on allegations that they conducted a fraudulent home sale scheme. Under the scheme, the petition preparers directed homeowners facing foreclosure to vacate their homes and quit-claim the homes to "investors" located by the petition preparers. The investors–who had paid several thousand dollars to the petition preparers–took over the homeowners' mortgage payments, with the homeowners thinking they were relieved of their mortgage debt. Integral to the scheme was the filing of a Chapter 13 bankruptcy case on behalf of the homeowner, which automatically stayed any foreclosure sale. By taking advantage of the debtors' right to make up late mortgage payments, the petition preparers used the bankruptcy cases as a source of home financing for the investors.

"The petition preparer's scheme was discovered as investors failed to make mortgage payments, homes were lost, and investors realized not only that they had defective title to the properties, but also that the preparer had quit-claimed some properties to several investors at once. Both the original homeowners and the investors were defrauded by this abuse of Chapter 13 bankruptcy."

Pat Tinker,
Trial Attorney,
Tampa

Chapter 4
Criminal Enforcement

Photo 1: Patrick Donley, DOJ Criminal Division; Sandra Rasnak, Chicago; and Robertson Park, DOJ Criminal Division
Photo 2: Arlene Tolbert, Philadelphia

In addition to granting civil enforcement powers to the Program, federal law directs the Program to refer criminal activity to the U.S. Attorneys and other law enforcement agencies and to assist in prosecuting criminal violations of the bankruptcy laws. Just like civil fraud and abuse, criminal bankruptcy fraud undermines the integrity of the bankruptcy system as well as public confidence in that system. Experience shows that bankruptcy fraud often is linked to other crimes, such as credit card fraud, tax fraud, identity fraud, federal benefits fraud, and money laundering. In addition, the bankruptcy system is susceptible to fraud perpetrated by those who prey upon unsophisticated consumers in deep financial distress.

The U.S. Trustee's role in criminal enforcement is multi-faceted. Program staff help investigate cases of suspected bankruptcy fraud, often presenting comprehensive packages of documentary evidence in conjunction with their referrals to the U.S. Attorneys. In some districts, Program attorneys designated as Special Assistant U.S. Attorneys act as lead or assistant prosecutors in bankruptcy fraud cases. Further, Program staff are key members of a number of inter-agency working groups, providing information on how bankruptcy may fit into various crimes including federal benefits fraud, identity theft, and health care fraud. They also conduct training and outreach programs, where they teach law enforcement personnel and others how to recognize and pursue cases of potential criminal bankruptcy fraud.

Criminal Enforcement Actions

Criminal enforcement actions include prosecutions of:

- Concealment of assets by debtors and officers of debtor companies.
- Identity fraud and/or Social Security fraud.
- Credit card "bust-outs."
- Crimes by bankruptcy professionals.
- Mortgage foreclosure scams.
- Various other crimes including tax fraud, bank fraud, mail fraud, and perjury.

Concealment of Assets

Some debtors try to hide property from creditors and from the bankruptcy trustee by failing to list that property on the bankruptcy documents and by lying about the property at the Section 341 meeting or in bankruptcy court. Sometimes, concealment of assets is only one part of a complex fraudulent scheme that includes other offenses such as wire fraud, mail fraud, securities fraud, and tax fraud. Concealment cases that were resolved in FY 2002 included the following:

- Thomas A. Warmus of Lighthouse Point, Fla., was sentenced to 97 months in prison following his bankruptcy fraud conviction in the Southern District of Florida for concealing more than $2 million in assets in bankruptcy cases he filed for himself and American Way Service Corp., a group of insurance companies that operated in several states. Warmus was found guilty of orchestrating a complex scheme to conceal assets that included high-end collectible automobiles, such as Ferraris and a Lamborghini; a 42-foot yacht; and a collectible World War II fighter aircraft. Before filing for bankruptcy, Warmus had a net worth of $50 million and his insurance companies were valued at more than $100 million. His scheme to defraud creditors began several months pre-petition, when he diverted revenues from American Way Service Corp. to companies

Heidi Feinman

"As a Special Assistant U.S. Attorney, I helped the prosecuting attorneys by serving as a resource for specialized information about bankruptcy law and procedure. For example, I explained what must be included in various bankruptcy documents filed with the court. In essence, the prosecutors needed me to show them all the ways Mr. Warmus was required to disclose information but didn't do so. This helped them formulate accurate and specific questions to elicit the information the jury needed in order to understand the bankruptcy fraud counts."

Heidi Feinman,
Trial Attorney,
Miami

in the name of his wife and diverted his personal income to companies in the name of his business associates, wife, and mother-in-law. While in bankruptcy, Warmus continued to sell undisclosed assets and use the proceeds for his personal benefit. During the criminal trial, a trial attorney from the Miami office of the U.S. Trustee served as Special Assistant U.S. Attorney and the U.S. Trustee Program's National Bankruptcy Fraud Coordinator testified as an expert on bankruptcy matters.

• A 97-month prison sentence was imposed in the Western District of New York upon Samuel Miceli of Penfield, N.Y., after he pleaded guilty to bankruptcy fraud, money laundering, bail jumping, and illegal possession of a firearm. When Miceli filed bankruptcy he failed to disclose that he was the owner and president of a corporation with approximately $600,000 in assets, and he concealed his ownership of approximately $675,000 in government bearer bonds and a $40,000 loan receivable. Miceli subsequently engaged in unlawful monetary transactions totaling over $870,000. The plea agreement directed Miceli to forfeit more than $870,000 plus his interest in other specified property. The Assistant U.S. Trustee in Rochester and the private trustee assisted with the investigation and prosecution, and were scheduled to testify at trial.

• Larry Henderson of Manassas, Va., was sentenced in the Eastern District of Virginia to nine years in prison for bilking three elderly clients of more than $250,000 each. Henderson, who pleaded guilty to bank fraud, was already serving a six-year state sentence for similar frauds. Henderson filed his third Chapter 7 case in 1999, listing numerous debts to elderly persons. Based on the Chapter 7 trustee's referral, the Alexandria office discovered that Henderson failed to schedule assets and disclose numerous creditors. Accordingly, the U.S. Trustee objected to discharge. During discovery, the U.S. Trustee learned that Henderson had defrauded elderly customers out of thousands of dollars by charging them exorbitant rates for home repair and yard work. When the money ran out, Henderson drove his clients to banks and caused them to take out home equity loans. The U.S. Trustee referred the matter to the U.S. Attorney and assisted with the prosecution by providing documents and other evidence.

• Joel Katz of Ruxton, Md., received a 97-month sentence for money laundering; concurrent 60-month sentences for conspiracy, mail fraud, and wire fraud; a concurrent 37-month sentence for bankruptcy fraud; and a concurrent 19-month sentence for being a felon in possession of a gun. After a four-week trial, Katz and a co-defendant were convicted of defrauding more than 16,000 customers by stealing more than $1.6 million in a telemarketing scheme. Katz's bankruptcy fraud conviction arose from his failure to list assets in his Chapter 7 bankruptcy case, including his interest in a $1.3 million home he shared with his girlfriend and a $340,000 Bentley he purchased for her. The Baltimore office assisted in the prosecution of the case.

• James Florence of Houston was sentenced in the Western District of Louisiana to 30 months in prison and three years supervised probation and ordered to pay restitution of $2.1 million, based on his guilty plea to concealing $2.5 million by transferring bankruptcy assets to offshore bank accounts. Florence, the vice president of Chapter 11 debtor WRT Inc., set up a shell corporation to which he sold oil and gas proceeds during WRT's bankruptcy. He transferred the sales proceeds to off-shore bank accounts in the Turks and Caicos Islands. The bankruptcy analyst for the Shreveport office helped the U.S. Attorney and FBI by analyzing corporate documents and bank documents, and by testifying as an expert witness before the grand jury.

Curtis Ching

• Indonesian defendant Sukamto Sia was sentenced in the District of Hawaii to three years in prison for bankruptcy fraud and wire fraud, and ordered to pay $3 million in restitution. Sia pleaded guilty to defrauding the Bank of Honolulu, in which he was a controlling shareholder, and to concealing bankruptcy estate property in the form of tax refund checks totaling more than $700,000. Sia engaged in a scheme to obtain millions of dollars in loans in the names of other individuals without their knowledge, with the loan proceeds going to entities controlled by Sia. The Bank of Honolulu failed, and was seized by the Federal Deposit Insurance Corp. in 2000. The case was referred to the U.S. Attorney by the Honolulu office of the U.S. Trustee. Sia was arrested by the FBI at his Section 341 meeting.

• Stephen Solesbee of Dallas was sentenced in the Northern District of Texas to 97 months imprisonment after he was convicted on charges of bankruptcy fraud, wire fraud, money laundering, and bank fraud. After Solesbee filed bankruptcy on behalf of Stephens Communications, employees complained to the Dallas office that they had not received their wages and that a person claiming to be the bankruptcy judge had called the office to tell them what to do. The U.S. Trustee investigated and referred the matter to the FBI, which discovered a pattern of criminal activity by Solesbee, including the purchase of operating companies, subsequent non-payment of employees, and removal of all company assets. The two counts of bankruptcy fraud were for Solesbee's intentional omission of creditors from the schedules in his own Chapter 13 case, and the knowing and fraudulent transfer and concealment of property post-petition. At Solesbee's trial, a trial attorney for the U.S. Trustee testified regarding bankruptcy practice, procedure, and the criminal referral of the case.

• After a nine-day trial, a jury in the District of Idaho found Bruce E. Minter, a former commercial airline pilot who maintained residences in Boise and McCall, guilty of fraudulently concealing assets in his bankruptcy case. The concealed assets included stock options and profit sharing benefits Minter held through Continental Airlines; an interest in his personal Cessna 185; and an interest in an air courier service business he purchased five weeks before filing bankruptcy. Minter was also convicted of concealing debts in the bankruptcy case, including more than $76,000 he owed to a German woman with whom he maintained a romantic relationship and more than $116,000 in debt incurred by his purchase of the courier business. Minter and his wife filed bankruptcy at least four times in Idaho. The Boise office referred the case for prosecution.

• After a jury trial, Charles H. Barber and his parents, Charles M. and Helen J. Barber, of Minerva, NY., were found guilty on charges of theft of public funds, wire fraud, bankruptcy fraud, and a money laundering conspiracy. The charges arose from the Barbers' schemes to defraud and their use of bankruptcy proceedings to further those schemes. Both father and son were convicted of concealing assets from the bankruptcy trustee and creditors and making false statements under penalty of perjury. The father was also found guilty of transferring approximately $489,000 from his brokerage account to an account in the Bahamas in contemplation of bankruptcy, and the mother was found to have engaged in bankruptcy fraud by receiving property in her name to defeat the bankruptcy laws. The Albany office assisted in the investigation and preparation for the bankruptcy aspects of the trial.

"Mr. Sia's arrest at the Section 341 meeting was very dramatic. He typically traveled with at least one bodyguard, so after the meeting commenced the FBI quietly posted numerous agents near the building exits and surrounded the meeting room. About an hour into the meeting, the parties decided to take a short break. That's when the FBI entered the room, told everyone to remain seated, and took Mr. Sia into custody without incident."

Curtis Ching,
Trial Attorney,
Honolulu

Janet Reasoner

"What immediately caught our attention was that the debtors listed three different Social Security numbers on their petition. We learned from the Social Security Administration that all three belonged to their minor children. Local police were already investigating the debtors' 'home improvement' scheme, which victimized local seniors. A joint investigation by the police, the FBI, the Social Security Administration, the Chapter 7 trustee, and the U.S. Trustee helped the U.S. Attorney obtain guilty pleas from both debtors. The U.S. Trustee and the Chapter 7 trustee also teamed up to ensure that the debtors' bankruptcy discharges were denied."

Janet Reasoner,
Assistant U.S. Trustee,
Cedar Rapids

Identity Fraud and/or Social Security Fraud

Crimes involving bankruptcy-related identity fraud and Social Security fraud appear to be on the rise. The most likely reasons for engaging in this conduct are to avoid detection of earlier bankruptcy filings, to hide assets, or to avoid alerting creditors that a bankruptcy case has been filed.

The following are examples of successful prosecutions for criminal identity fraud and/or Social Security fraud:

• Laura Lee Bohnenkamp, formerly of Cedar Rapids, Iowa, pleaded guilty in the Northern District of Iowa to making a false statement in connection with a loan application, fraudulent use of Social Security numbers, mail fraud, and bankruptcy fraud. Her husband, Kevin Joseph Bohnenkamp, pleaded guilty to giving a false statement in connection with a loan application, fraudulent use of Social Security numbers, and bankruptcy fraud. Laura Lee and Kevin were ultimately sentenced to 24 months in prison and 12 months in prison, respectively. When the Bohnenkamps filed Chapter 7 bankruptcy, they falsely used their minor children's Social Security numbers on their petition instead of their own numbers. In addition, Laura Lee represented that her minor sons' Social Security numbers were her own on an account opening document and a bank signature card; represented that a co-worker's Social Security number was her husband's on 18 business checks drawn on a local bank; gave the bank a security interest in a two-carat diamond when she knew the ring pledged did not have a diamond; engaged in mail fraud when she obtained and used a credit card; and made a false declaration under penalty of perjury in her bankruptcy case by stating that she had provided her true Social Security number. The Cedar Rapids office referred the case for prosecution and obtained denial of the Bohnenkamps' bankruptcy discharge. The FBI, the Office of the Inspector General for the Social Security Administration, and the Chapter 7 trustee also participated in the investigation.

• Jay S. Potter and Katherine A. Potter were sentenced in the Western District of New York following their guilty pleas to bankruptcy fraud. The defendants filed bankruptcy in 1988 using their real names. In 1994, they filed again, but Katherine used a false name and her daughter's Social Security number. At the Section 341 meeting in that case, the defendants falsely represented that Katherine was Jay's second wife, and was not the same person who had filed bankruptcy with Jay in 1988. In 2001, the defendants filed a third bankruptcy case, with Katherine using her real name and Social Security number. The defendants falsely represented that Katherine had not filed bankruptcy in 1994 and that the person who filed in 1994 was Jay's sister. The Rochester office referred the case to the U.S. Attorney after researching the prior filings and consulting with the Office of Investigations of the Social Security Administration. In addition the private trustee, working with the U.S. Trustee, obtained an order denying discharge in the third case.

• In the Western District of Oklahoma, Joyce Ann McKinney was sentenced to 27 months in prison and five years supervised release based on her guilty plea to engaging in bank fraud, using a false Social Security number, and making a false declaration in bankruptcy. McKinney was charged with obtaining numerous bank loans by pledging motor vehicles that were already pledged to other financial entities, and using false Social Security numbers to obtain these loans. Ultimately, McKinney filed Chapter 13 bankruptcy and agreed in writing under penalty of perjury to return a pickup truck that the bank had already repossessed. The Oklahoma City office referred the case to the U.S. Attorney and assisted the FBI in developing evidence.

Lisa Maness

• Edward Harry Senior III of College Park, Ga., pleaded guilty in the Northern District of Georgia to seven counts of a nine-count indictment charging him with wire fraud, mail fraud, the use of a false Social Security number, identity theft, and bankruptcy fraud. He was sentenced to 24 months in prison followed by three years supervised release, and ordered to pay restitution. Senior worked for an Atlanta-area mortgage broker and originated and processed his own loans. He used the name, Social Security number, and credit history of another individual to obtain two loans to purchase real property, inducing a lender to wire transfer more than $428,000 to the settlement agent. When Senior defaulted on the loans, he filed bankruptcy to stay the foreclosure sale. The matter was referred to the U.S. Attorney by the Atlanta office.

• Louis Penna was sentenced in the District of New Jersey in a bankruptcy fraud case arising from the filing of a false petition. Penna had pleaded guilty to impersonating his brother in 1996 to obtain a mortgage and in 1998 by filing a false Chapter 13 petition. Penna used his brother's name, Social Security number, and employment data to obtain a mortgage and to purchase a home. After making mortgage payments for a year and a half, he defaulted on the loan and foreclosure proceedings were initiated. On the eve of the sheriff's sale, Penna forged his brother's name on a Chapter 13 petition to stay the proceedings. Penna's true identity was discovered during the Chapter 13 case, the case was dismissed, and the Newark office made a criminal referral to the U.S. Attorney.

• In the Northern District of California, debtor Lancelot Arthur Larue was ordered to pay $120,719 in restitution and sentenced to five years probation and six months home confinement for making false statements in a bankruptcy case. Larue listed an acquaintance's address as his address; claimed he had no interest in any real property although he owned his residence; failed to disclose that he also went by the name Arturo Alanis Cantu and that he used a separate Social Security number under that name; and failed to disclose that, under the Cantu name, he received a Chapter 7 discharge in 1998. The Oakland office referred the matter to the U.S. Attorney.

Credit Card 'Bust-Outs'

Most often, bankruptcy-related credit card fraud consists of a debtor's attempt to discharge credit card debt that was incurred through fraudulent conduct. Sometimes this is part of a scheme called a credit card bust-out, in which an individual runs up an enormous amount of consumer credit card debt for purchases and cash advances with the intent of filing bankruptcy, concealing the assets obtained by using the card, and discharging the entire debt. The individual may have made false statements on credit applications in order to obtain the credit. Bust-out schemes may be small local operations or may be run by organized rings as a part of a criminal enterprise. In some cases, the money is transferred overseas.

These cases are examples of credit card bust-outs:

• Three individuals were indicted in the Northern District of Illinois in connection with alleged credit card bust-outs. One individual, Bakht Khan, had filed bankruptcy seeking to discharge almost $367,000 in credit card debt; the others were allegedly involved in schemes carried out by Khan. Khan ultimately pleaded guilty to bankruptcy fraud, but the other two are fugitives. The Chicago office referred the cases to the U.S. Attorney.

"We investigated previous bankruptcy petitions Mr. Senior filed over the course of approximately 10 years. The documents in these cases contained the false names and Social Security numbers he used. These documents, as well as the real estate records we found when we performed searches in the county courthouse, demonstrated his pattern of conduct in perpetrating his fraudulent scheme."

Lisa Maness,
Paralegal Specialist,
Atlanta

Martha Hildebrandt

"We have an active bankruptcy fraud task force in our district. Chaired by the U.S. Attorney's office, this group includes employees from the U.S. Trustee and agents from the FBI, U.S. Postal Service, and Social Security Administration/ Office of the Inspector General. In the 'sweeps' of arrests for credit card bust-out schemes, each case was managed by a team of three agents from the various agencies, led by the Assistant U.S. Attorney. This allowed continuity in the bankruptcy investigations despite the scheduling challenges posed by the agents' varied caseloads."

Martha Hildebrandt,
Acting Assistant
U.S. Trustee,
Newark

• In two "sweeps" by the Bankruptcy Fraud Task Force for the District of New Jersey, 13 individuals were arrested on charges of participating in credit card bust-outs, allegedly running up more than $6.1 million in credit card charges and then filing for bankruptcy to discharge the debts. The Newark office referred the cases and assisted in the investigations. One sweep netted five individuals, including an alleged recruiter who is believed to have instructed credit card holders on how to participate in bust-out schemes by obtaining hundreds of thousands of dollars in cash advances, merchandise, and services–such as computers, electronic equipment, and airline tickets–and then filing for Chapter 7 bankruptcy protection. The other four individuals arrested in that sweep were each alleged to have charged between $250,000 and $414,000 on as many as 35 credit cards. Three of the individuals arrested in the sweep have pleaded guilty, resulting in a total of 10 guilty pleas arising from New Jersey bust-out cases in FY 2002, with cumulative unsecured debt exceeding $5.4 million.

Crimes by Bankruptcy Professionals

On occasion, bankruptcy professionals such as attorneys and accountants engage in criminal activities to unjustly enrich themselves at the expense of the debtor, creditors, and/or other participants in the bankruptcy proceeding. Such actions include embezzling from the bankruptcy estate, assisting debtors in concealing assets, and engaging in activities that abuse the integrity of the bankruptcy process.

The following are examples of crimes by bankruptcy professionals in FY 2002:

• Attorney Joel Steinberg of Alexandria, Va., pleaded guilty to wire fraud in the Eastern District of Virginia, based on his actions in embezzling from a client in Chapter 13 bankruptcy. Steinberg embezzled more than $22,000 intended for payment to the client's mortgage holders under the Chapter 13 plan. Evidence of the embezzlement came to light when the debtor client complained to the Chapter 13 trustee, who notified the Alexandria office. After investigating, the U.S. Trustee filed a civil complaint against Steinberg seeking disgorgement of all fees paid by the debtor, an accounting of all monies received, a surcharge for all late fees and penalties levied against the debtor by his mortgage companies, and disbarment from practice before the bankruptcy court. During discovery, which included subpoenaing Steinberg's trust account records, further misconduct was discovered in unrelated cases. The allegations in the U.S. Trustee's civil complaint formed the basis of his criminal indictment. Before the criminal trial, Steinberg agreed to disbarment for at least five years.

• After pleading guilty to larceny, uttering a fraudulent check, obtaining credit by a false pretense, and obtaining property by a false pretense, disbarred attorney Sean C. Murphy was sentenced on each count to a concurrent term of two years in the Massachusetts House of Correction, nine months to be served with the balance suspended, and five years probation. Some of the charges related to Murphy's activities in representing bankruptcy debtors, from whom he misappropriated funds intended for creditors. The Boston office and the Chapter 13 trustee assisted in the investigation.

• Bankruptcy attorney Jami Lynn Stewart of Oklahoma City was sentenced in the Western District of Oklahoma to home detention and probation for failing to file tax returns and criminal contempt of court. In addition to failing to report income in her tax returns for several years, Stewart failed to disclose to the bankruptcy court her full fees from more than 200 Chapter 13 bankruptcy clients. Stewart was earlier suspended from practice in the Western District of Oklahoma and in

Gerri Karonis

the Eastern District of Texas, where she engaged in the same conduct. The criminal referral was made by the Oklahoma City office.

• Attorney Dennis F. Monahan of Medway, Mass., pleaded guilty in the District of New Hampshire to bankruptcy fraud, in a case referred for prosecution by the Manchester office. Monahan assisted in concealing assets that belonged to the estate of Advanced Precision Technologies Inc., a Seabrook, N.H., company in Chapter 7 bankruptcy. He also pleaded guilty in the District of Massachusetts to forging a judicial officer's signature on a court document. The two sentences were to be served concurrently. Attorney Monahan later submitted his affidavit of resignation and was disbarred by the Massachusetts Supreme Judicial Court.

Mortgage Foreclosure Scams

Individuals who operate fraudulent schemes that target people facing foreclosure or eviction are subject to criminal as well as civil penalties. As described earlier, some bankruptcy petition preparers solicit clients whose homes are listed in the foreclosure notices, falsely promise to work out a client's mortgage problems for a fee, and instead either persuade the client to file bankruptcy or place the client in bankruptcy without the client's knowledge. In many mortgage foreclosure scams, the filing of the bankruptcy petition is merely a means to prolong the fraud–and the clients' payments–until foreclosure becomes inevitable.

A single mortgage foreclosure scam can harm tens or even hundreds of families, many of whom end up losing their homes. These scams also interfere with bankruptcy administration by clogging the courts with bankruptcy cases that are never carried forward. The Program works closely with the FBI and other law enforcement agencies to detect and prosecute mortgage foreclosure scams.

Successful prosecutions for mortgage scam operations in FY 2002 include these cases:

• Monte Lusk pleaded guilty to conspiracy to commit fraud in connection with the operation of a foreclosure scam in the Northern District of Texas. He was sentenced to 60 months in prison followed by three years supervised release, and ordered to pay $87,706 in restitution to victims of the scam. An indicted co-defendant remains a fugitive. Lusk and his co-defendant contacted homeowners facing foreclosure and falsely represented that they worked for a large law firm specializing in freezing foreclosure actions. They directed and assisted the homeowners in transferring a part interest in their homes to trusts they created as part of the scheme. Then they filed bankruptcy on behalf of these trusts in California, Washington, Oregon, and Florida. The plea and indictment arose from "Operation Payback," an undercover investigation aimed at foreclosure scams and equity skimming in northern Texas. The undercover operation involved the U.S. Attorney for the Northern District of Texas and the Dallas offices of the FBI, U.S. Trustee, Department of Housing and Urban Development, and Postal Inspection Service. The U.S. Trustee's office in Seattle also assisted in the investigation.

• Edward Arnold Alcantara III and Krizia Aston Arpel were sentenced in the District of Oregon to 10 years and six and one-half years, respectively, based on their guilty pleas to mail fraud and bankruptcy fraud in connection with a national foreclosure fraud scam that affected more than 900 homeowners. Between 1997 and 2000, the defendants formed 29 shell corporations that received title to the homeowners' properties and, without the homeowners' knowledge, filed fraudulent bankruptcy cases in 11 states and the Virgin Islands. The defendants obtained more than $1.6 million through the scam. They were arrested on the French Riviera and subsequently extradited

"New Hampshire Chapter 7 trustee Tim Smith knew something was awry when a debtor machine shop didn't disclose any machinery on its schedules. By interviewing the debtor's president, the trustee discovered that attorney Monahan had actively counseled the debtor to transfer all of the assets to a new corporation. After the attorney formed the new corporation, he represented both sides in the transfer of assets from one corporation to the other. When the debtor filed bankruptcy several months later, the asset transfers were not disclosed."

Gerri Karonis,
Assistant U.S. Trustee,
Manchester

CLAIRE FAY

"Alcantara and Arpel flagrantly abused the bankruptcy system to carry out their intricate fraud scheme. Working together, the U.S. Attorney's office in Portland and the U.S. Trustee's offices in Portland and Atlanta were able to bring to justice two defendants who had financially devastated hundreds of families nationwide."

Claire Fay,
Assistant U.S. Attorney,
Portland, Ore.

to Oregon. The Portland and Atlanta offices of the U.S. Trustee assisted the FBI and the U.S. Attorney's office in the criminal case, with cooperation from numerous other U.S. Trustee offices in districts where bankruptcy cases were filed.

Other Crimes

Virtually any type of criminal conduct can arise in connection with a bankruptcy case. Often the bankruptcy filing is the last step in a series of crimes that may include tax fraud, bank fraud, mail fraud, investment fraud, money laundering, embezzlement from pension or health benefit funds, and so on. Here are some cases involving various other crimes:

• Martha Sewell Herring and John Herring were sentenced in the Eastern District of Louisiana based on convictions of conspiracy to embezzle and steal from employee pension plans, theft or embezzlement from employee pension plans, health care fraud, and bankruptcy fraud. Five companies owned by the Herrings at the time of the transactions were also convicted of conspiracy. The Herrings placed five home health care agencies in Chapter 11 bankruptcy after Medicare sought repayment for years of overpayment and disallowed costs. In the health care agency bankruptcies, the Herrings failed to disclose large sums of money owed by the Herrings and other companies to the agencies, and failed to disclose a hospice license. The Herrings were each sentenced to 84 months in prison, and both the Herrings and the corporate defendants were ordered to pay restitution of approximately $7.3 million. The New Orleans office made the referral for prosecution of the bankruptcy fraud. The Assistant U.S. Trustee worked with the U.S. Attorney's office, the FBI, and pension fraud investigators, and testified at trial as an expert witness.

• The president, the vice president, and the majority stockholder of Chapter 11 debtor Unger & Associates Inc. (UAI) were sentenced in the Eastern District of Texas in connection with their misuse of federal student loan payments. Ronald Unger, Donald Hess, and Arlene Unger were held jointly and severally liable for $1,009,596 in restitution. In addition, Ronald Unger was sentenced to 27 months in prison and three years supervised release after pleading guilty to conspiracy to commit mail fraud and misapply federal student loan funds; Arlene Unger and Donald Hess received lesser sentences. UAI contracted with the U.S. Department of Education and colleges and universities throughout the country to collect student loan payments. During UAI's bankruptcy case, the Tyler office developed evidence regarding potential fraud or gross mismanagement by UAI officers and successfully moved for the appointment of a trustee, as well as making a criminal referral to the U.S. Attorney. The indictment charged that the Ungers diverted trust funds intended for their clients and used the funds for UAI's operating expenses as well as for their own personal expenses such as jewelry, clothing, beauty supplies, groceries, party and pool supplies, wine, liquor, and a trip to Walt Disney World.

• In the Northern District of Indiana, Julius O'Neal, president of former debtor Sands Trucking Inc., was convicted of falsifying records submitted to an employee health and welfare plan. O'Neal under-reported the amounts owed to the plan and made false statements on the remittance report. The South Bend office assisted in the investigation and prosecution of the case, providing bankruptcy documents as well as guidance regarding bankruptcy practice and procedure.

• In the Northern District of California, C. Kevin Chuang was fined $250,000 and sentenced to two years probation based on his guilty plea to making a false statement under penalty of perjury in relation to a bankruptcy proceeding. Chuang, who was chief financial officer for computer components distributor Synnex Information Technologies Inc., admitted that he filed a false proof of claim in the Chapter 11 bankruptcy case of Trans-Eagle Corp. and falsely testified regarding the validity of a security agreement between Synnex and Trans-Eagle. The San Jose office made the criminal referral and provided litigation support.

• Bankruptcy petition preparer Tiffanie Naylor of Ft. Wayne, Ind., pleaded guilty in the Northern District of Indiana to bankruptcy fraud for forging two notices of automatic stay to avoid termination of electric utility service for non-payment. The South Bend office determined that Naylor used the case number of a debtor whose petition she had prepared.

Multi-Agency Working Groups

Many successful criminal enforcement actions result from the work of national and regional bankruptcy fraud working groups. As a member of national law enforcement working groups, the Program serves as a resource for information and education on the bankruptcy system and specific law enforcement initiatives. In addition, U.S. Trustee field offices in more than 60 judicial districts participate in regional or local bankruptcy fraud working groups, which generally are headed by the local U.S. Attorney and include the FBI and other federal law enforcement agencies.

Multi-agency working groups, such as the National Bankruptcy Fraud Working Group and the Identity Theft Subcommittee of the Attorney General's Council on White Collar Crime, provide a coordinated mechanism for sharing information and assisting in the investigation and prosecution of bankruptcy crimes.

The National Bankruptcy Fraud Working Group includes not only members from Justice Department components such as the U.S. Trustee Program, the U.S. Attorneys, the Criminal Division, and the FBI, but also representatives from a variety of federal agencies including the Internal Revenue Service's Criminal Investigation Division, the Department of Housing and Urban Development's Office of Inspector General, the Treasury Department, the Social Security Administration's Office of Inspector General, the Postal Inspection Service, the Veterans Administration, the Federal Trade Commission, the Securities and Exchange Commission, and the Commodities Futures Trading Commission. The working group shares information about emerging areas of bankruptcy fraud such as identity fraud, health care fraud, corporate fraud, mortgage fraud, and credit card bust-outs.

The Program's work with the Identity Theft Subcommittee of the Attorney General's Council on White Collar Crime provides contacts with other law enforcement groups whose mandate is to investigate and prosecute identity theft cases.

Chapter 5
Litigation in Chapter 11 Business Reorganizations



Photo 1: Renee Shamblin, Phoenix
Photo 2: Jeffrey Bookman and Janet Lewis, Philadelphia
Photo 3: Ellen Triebold, William Andersen, and Alex Edgar, South Bend

The U.S. Trustee is an active participant in Chapter 11 reorganizations, but the degree of activity often depends on the size and nature of the case. In all Chapter 11 cases, the U.S. Trustee monitors activity to ensure that the cases move through the system in a timely and efficient manner. This is accomplished, in part, by reviewing pleadings and financial documents, conducting an initial interview of the debtor at the commencement of the case, ensuring that the debtor complies with the requirements of the court and the U.S. Trustee, and appearing in court as a party in interest. Further, the U.S. Trustee assesses the debtor's financial viability and its ultimate ability to reorganize by routinely reviewing financial information provided by the debtor. If it becomes clear that the debtor is unlikely to successfully reorganize, is continuing to experience loss and/or incur significant post-petition debt, or is engaging in delay or other acts prejudicial to creditors, the U.S. Trustee will take action that may result in dismissal of the case, conversion to a Chapter 7 liquidation, or appointment of a trustee or examiner.

Although the majority of Chapter 11 cases are small to medium-sized, FY 2002 witnessed the highest number of large, complex Chapter 11 reorganization cases ever filed by public companies, including WorldCom Inc., with a reported $103.9 billion in assets; Enron Corp., which reported $63.3 billion in assets; Global Crossing Ltd., which reported $30.2 billion in assets; Adelphia Communications Corp., reporting $21.5 billion in assets; and KMart Corp., reporting $14.6 billion in assets.

Large, complex business reorganization cases often involve multiple related debtors, many bankruptcy professionals, significant assets and liabilities, and difficult legal issues. Important issues frequently arise early in the case. Because many actions must be taken on the first day, often without notice to creditors and prior to the appointment of creditors' committees, the U.S. Trustee must devote resources in the early stages of the case to ensure that the rights of parties are preserved. For example, motions that may have a notable impact on the case are typically filed by the debtor on the first day and require immediate attention. The U.S. Trustee carefully reviews the motions, and takes appropriate steps to ensure that the rights of third parties are not irreparably affected as the debtor receives necessary relief.

U.S. Trustee's Duties in Chapter 11 Cases

Although the demands in extremely large cases may be more immediate and resource-intensive than in small and medium-sized cases, the U.S. Trustees perform certain tasks in all Chapter 11 cases. These duties include:

• **Reviewing First Day Orders.** The U.S. Trustee reviews the debtor's requests for emergency orders early in a bankruptcy case, and ensures that the requested relief is tailored to the circumstances. For example, debtors may seek immediate court approval to retain professionals, obtain emergency financing, and pay certain suppliers. These requests may affect the rights of creditors and alter their ability to negotiate the terms of the debtor's reorganization later in the case.

• **Conducting Initial Debtor Interviews.** Immediately after a Chapter 11 case is filed, the U.S. Trustee contacts the debtor's attorney to schedule an "initial debtor interview." In the interview, the U.S. Trustee meets with representatives of the debtor to discuss the reasons for filing the case, consider the debtor's early plans for reorganization, and assess the debtor's financial viability. At the initial debtor interview, the U.S. Trustee also advises the debtor of its fiduciary obligations and of the U.S. Trustee's role in case administration.

• **Appointing Official Committees.** As soon as possible after a case is filed, the U.S. Trustee appoints a committee of unsecured creditors, determines whether additional official committees should be established, and engages in oversight of committee actions. Each committee upholds the interests of the creditor group it represents.

• **Conducting Meetings of Creditors.** Within a reasonable time after a case is filed, the U.S. Trustee schedules and presides at a meeting of creditors. The debtor, or a representative of the debtor in a corporate case, is required to appear at the meeting and submit to examination under oath. The debtor may be examined by certain entities including the U.S. Trustee, a trustee or examiner appointed in the case, an indenture trustee, and creditors.

• **Appointing Chapter 11 Trustees and Examiners.** Although the debtor generally remains in possession of its assets while reorganizing in Chapter 11, the court may order the appointment of a Chapter 11 trustee if it determines that cause exists or that the appointment is in the best interest of creditors, equity holders, and others with an interest in the estate. A trustee "steps into the shoes" of the debtor's management, and acts as a fiduciary for all interested parties. The court may also decide to leave the debtor's management in place, but direct the appointment of an examiner to investigate and report on the debtor's conduct, assets, liabilities, business operations, and financial conditions. If the court orders the appointment of a trustee or examiner, the U.S. Trustee, after consultation with the parties and subject to court approval, appoints a disinterested person to serve in that capacity. In FY 2002, the U.S. Trustee filed 245 motions to appoint a trustee or examiner. During that period, 199 motions to appoint a trustee or examiner were granted and 28 were denied.

• **Monitoring Employment and Compensation of Professionals.** The U.S. Trustee reviews and, if appropriate, objects to applications filed by professionals seeking employment in the case, payment of compensation, and/or reimbursement of expenses. Professionals who serve in the case–and receive payment from the bankruptcy estate–might include attorneys, accountants, auctioneers, investment advisors, turnaround specialists, and real estate brokers. For example, the U.S. Trustee might object to employment of a law firm on the ground that the firm has a conflict of interest arising from its work for other clients. As another example, the U.S. Trustee might challenge the reasonableness of professional fees billed in a case, such as charges for drafting a failed reorganization plan after financial information clearly showed that the plan would not be feasible. During FY 2002, 11,827 formal actions and informal inquiries initiated by U.S. Trustees regarding employment and compensation of professionals in both Chapter 7 and Chapter 11 cases resulted in professional fee reductions and disgorgements totaling almost $58 million.

• **Reviewing Reorganization Plans and Disclosure Statements.** The U.S. Trustee reviews reorganization plans and disclosure statements filed by parties in the case to make sure they provide adequate and accurate information. During FY 2002, U.S. Trustees filed nearly 1,200 objections to disclosure statements and over 500 objections to confirmation of debtors' plans. Objections to disclosure statements were sustained in more than 980 cases, while confirmation was denied or plans were voluntarily amended in over 300 cases after a formal objection had been filed. In over 1,800 cases, debtors voluntarily amended their plans of reorganization to comply with the U.S. Trustee's concerns without the need for formal court action.

Brian Fittipaldi

• **Ensuring Compliance.** The U.S. Trustee ensures that all required reports, schedules, and fees are timely filed, and that the debtor manages money and assets consistent with the Bankruptcy Code and with its fiduciary duty to creditors. Required documents include the debtor's monthly operating reports, tax returns, schedules of income and expenses, and proof of insurance. These documents allow parties to monitor the debtor's progress toward reorganization.

• **Preventing Delay and Preserving Assets.** The U.S. Trustee takes action to prevent undue delay by, for example, filing a motion to dismiss a case, to convert the case to a Chapter 7 liquidation, or to appoint a Chapter 11 trustee. During FY 2002, U.S. Trustees filed more than 4,150 motions to dismiss or convert Chapter 11 cases. During the same period, approximately 2,700 motions to dismiss or convert were granted. During FY 2002, bankruptcy courts denied approximately 300 motions to dismiss or convert, while other motions were still pending at the end of the fiscal year.

• **Combating Fraud.** The U.S. Trustee investigates criminal, fraudulent, or abusive conduct for possible civil or criminal prosecution. The U.S. Trustee pursues civil penalties, and refers cases of apparent criminal fraud to the U.S. Attorney for investigation and criminal prosecution.

Appointment of Trustee or Examiner

Pursuant to 11 U.S.C. § 1104, the U.S. Trustee or any party in interest may seek the appointment of a Chapter 11 trustee for cause including fraud, dishonesty, incompetence, or gross mismanagement of the affairs of the debtor by current management, either before or after the commencement of the case. Further, the U.S. Trustee is authorized to seek appointment of an examiner to investigate the conduct of the debtor and report back to the court. Generally, an examiner is appointed only where there are questionable management activities, unexplained irregularities in the debtor's financial history, or other special factors. The following are examples of cases in which a trustee or examiner was appointed:

• The Manhattan office of the U.S. Trustee appointed two examiners in the bankruptcy case of Enron Corp. One examiner was authorized to investigate and report on transactions involving Enron Corp. and related entities, including "off balance sheet" transactions. In September 2002 that examiner filed his initial report, which uncovered the extensive misuse, by Enron management, of complex financial structures known as "special purpose vehicles" to mask the poor financial condition of the company. Another examiner was charged with investigating and reporting upon Enron's cash management system.

• The Manhattan office, assisted by the EOUST and other Program personnel, sought and received bankruptcy court approval to appoint an examiner in the WorldCom Inc. bankruptcy case. Former Attorney General Dick Thornburgh was appointed to investigate any allegations of fraud, dishonesty, incompetence, misconduct, mismanagement, or irregularity in the arrangement of the affairs of any of the debtors by current or former management, and to provide a report to the court. Program resources were provided to the Manhattan office to address issues raised early in the case. The Assistant U.S. Trustee in Roanoke led efforts to draft, negotiate, and argue the motion to appoint the examiner.

• The Woodland Hills office obtained appointment of a Chapter 11 trustee in the bankruptcy case of Reed Slatkin, co-founder of Internet service

"The Slatkin case commenced with many investors waking up to find that their retirement account balances were either a fraction of what they believed them to be or were wiped out entirely. We had to move quickly to file–and win–a motion to appoint a Chapter 11 trustee to ensure that a disinterested party replaced the debtor in control of the case. This also gave those investors a fighting chance to recover their savings."

Brian Fittipaldi,
Trial Attorney,
Woodland Hills

Frank Perch

"When we obtained the professional's pre-petition billing and payment history, we identified payments that implicated the Third Circuit's decision in In re Pillowtex. Under that decision, a bankruptcy court considering whether to approve a professional's retention must look at whether the professional received pre-petition preferential payments that could affect its disinterestedness in the case. Obtaining adequate disclosures from the proposed professional is key to identifying and addressing these issues."

Frank Perch,
Assistant U.S. Trustee,
Wilmington

provider Earthlink Inc., based on allegations that he operated a Ponzi scheme through which he misappropriated over $230 million, defrauded more than 500 investors, concealed $90 million in accounts, and commingled investor funds with personal funds. Criminal charges were later filed against Slatkin, and he pleaded guilty to 15 counts of mail fraud, wire fraud, money laundering, and conspiracy to obstruct justice in connection with an investigation by the Securities and Exchange Commission.

• Chapter 11 debtor Atrium Executive Business Centers-Tollway Inc. consented to the appointment of a trustee after the Tyler office filed an emergency motion with the Bankruptcy Court for the Eastern District of Texas seeking the appointment. Within a week after the bankruptcy filing, the debtor's landlord informed the U.S. Trustee that the debtor was diverting office suite tenants to other locations operated by corporations that were in common ownership with the debtor

• In the case of Port West Associates LP, the Columbus office successfully sought appointment of a Chapter 11 trustee in the Southern District of Ohio after learning that the debtor violated numerous requirements of the Department of Housing and Urban Development and wrote $400,000 in checks to insiders within 30 days before filing bankruptcy.

• The Bankruptcy Court for the District of Nebraska granted appointment of a trustee in the Chapter 11 case of Rosen Auto Leasing Inc., after the Omaha office showed that the debtor sold and leased vehicles out of trust before filing bankruptcy. The debtor used the proceeds of vehicle sales and leases to finance its business operations instead of remitting those proceeds to its secured lenders.

• On motion of the Tampa office, the Bankruptcy Court for the Middle District of Florida directed the appointment of a Chapter 11 trustee for Atlantic International Mortgage Company and two related entities. Three Atlantic officers subsequently pleaded guilty to wire fraud affecting a financial institution, based on their participation in a scheme under which fraudulent notes and mortgages were issued to financial institutions before the Chapter 11 cases were filed. The fraud was similar to a pyramid scheme, with early lenders repaid from monies loaned by later lenders based on false mortgages. The three officers were each sentenced in the Middle District of Florida to 37 months imprisonment and ordered to pay restitution totaling almost $26 million. The Chapter 11 trustee identified a pool of approximately $60 million in mortgage transactions that must be investigated to identify fraudulent transactions and recipients of improper transfers.

Employment and Compensation of Professionals

One of the Program's statutory duties is to monitor the professionals who serve in bankruptcy cases–such as attorneys, accountants, auctioneers, real estate brokers, and financial advisors–to ensure full disclosure of potential conflicts, compliance with the law, and reasonable compensation. Examples of cases involving professional fees include the following:

• The Wilmington office objected to an application by Chapter 11 debtor Exide Technologies to retain an accounting firm as auditor, because the application did not sufficiently disclose information about payments made by the debtor to the firm before the bankruptcy. Upon investigation, the U.S. Trustee negotiated with the accounting firm to disgorge $782,000 in preferential payments as a condition of retention.

Joe Golden

• In the Chapter 11 case of Adesta Communications Inc., the Omaha office successfully objected to the employment of a financial advisor for the creditors' committee who requested a flat monthly fee of $100,000 without providing detailed time entries. The advisor completed its services within six months. Calculated on an hourly basis, its fees totaled $272,000–or $300,000 less than it would have received under the flat fee arrangement it requested.

• The Bankruptcy Court for the Southern District of Indiana denied the request of creditors' committee counsel for a fee enhancement of $3.05 million in the Chapter 11 case of A.G. Financial Service Center Inc. The Indianapolis office and the debtor's parent corporation objected on the ground that a fee enhancement was not warranted by the facts of the case. The U.S. Trustee argued that the results were within the range of possibilities at the time of filing, counsel bore no risk of non-payment because the estate had ample funds, and counsel's lodestar fee was adequate compensation for the services provided.

• In the Chapter 11 case of Safety-Kleen, the Wilmington office negotiated a settlement of an objection to an accounting firm's interim fee application resulting in a reduction of more than $400,000 in fees and expenses. The accounting firm asked for payment of $1.2 million in delayed fees from prior billing periods, which were lumped together with other fee entries in an indecipherable fashion. In addition, some professionals billed for more than 14 hours of work per day over extended periods, including weekends and holidays, and professionals billed time for clerical and ministerial tasks such as picking up office supplies and ordering food for meetings.

• Approximately $2.6 million in fees awarded to an examiner in the bankruptcy case of an electrical utility were disallowed based on objections filed by several parties, including the Louisville office. Earlier in the Chapter 11 case of Big Rivers Electric Corp., the bankruptcy court awarded the examiner approximately $2.6 million in fees, consisting of roughly $500,000 in base compensation plus a $2.1 million fee enhancement. On appeal, the District Court for the Western District of Kentucky struck down the enhancement on the ground that the examiner's work had not been extraordinary, and sent the case back to the bankruptcy court to consider whether the examiner engaged in misconduct that justified the denial of fees. The U.S. Trustee argued on remand that the examiner improperly solicited unsecured creditors to pay him 3 percent of any "new value" they received in the bankruptcy case. The district court, sitting in bankruptcy, found that the examiner's actions were incompatible with his obligations under the Bankruptcy Code and Rules, he was not a "disinterested" person, and he violated his duty to disclose his compensation arrangements. The court's ruling that the examiner failed to adhere to the standards of behavior required of a bankruptcy professional meant the examiner was not entitled to any of the $2.6 million in fees originally awarded and was required to disgorge $960,000 in fees already in his possession. The examiner has appealed both rulings to the Sixth Circuit Court of Appeals.

• Based on an objection by the Corpus Christi office, the Bankruptcy Court for the Southern District of Texas refused to authorize a Chapter 11 debtor to employ a restructuring officer unless certain indemnification language was stricken from the debtor's application. Chapter 11 debtor EnRe L.P., a multi-million dollar oil and gas exploration company with operations throughout the Southwest, sought to indemnify the restructuring officer from all acts of negligence and/or gross negligence. The debtor subsequently deleted the indemnification language.

"A number of people worked hard to bring the examiner's impermissible dealings to light in this case. Two wonderful allies were Michael Fiorella, the debtor's attorney, and James Bruen, an attorney from the Justice Department's Civil Division who has years of experience litigating utility cases. Their diligence and zeal helped expose a particularly troubling situation."

Joe Golden,
Assistant U.S. Trustee,
Louisville

Martha Dahm

"We argued that the divergent interests of the debtor and the non-debtor entities compromised the law firm's ability to give the debtor even-handed advice on valuation, funding, and possible reorganization plan provisions. We also argued that the law firm's ongoing relationships with the debtor's insiders prevented it from representing the debtor independently and impartially. After the court ruled in our favor, another firm took over as lead counsel and the debtor's reorganization plan was successfully confirmed."

Martha Dahm,
Trial Attorney,
St. Louis

• The Tulsa office's objections to more than $1.9 million in fees sought by a financial advisor in the Chapter 11 case of Commercial Financial Services Inc. were sustained by the Bankruptcy Court for the Northern District of Oklahoma, which disallowed over $1 million of the fees. The financial advisor argued that the payment terms were unconditionally approved when it was first employed and the fees were not subject to review under the Bankruptcy Code, but the court found that the advisor failed to comply with either the court's administrative order on fee applications or the U.S. Trustee's fee guidelines. The financial advisor appealed the case to the Bankruptcy Appellate Panel for the Tenth Circuit.

• The Bankruptcy Court for the Eastern District of Missouri denied the application of Chapter 11 debtor LLS Corp. to retain a law firm, after the St. Louis office and the debtor's prior owners opposed the application because of the firm's extensive past and present representation of the debtor's insiders and equity holders. Within the previous two years, the firm received approximately $20 million from representing an entity whose affiliate was the debtor's controlling shareholder. Further, principals of that entity participated in a partnership that owned 20 percent of a limited liability corporation that in turn held 59 percent of the debtor's bond debt and 8 percent of its common stock, and was an ex officio member of the unsecured creditors' committee.

• After a four-day trial on fee objections made by the Albuquerque office and a secured creditor, the Bankruptcy Court for the District of New Mexico reduced fees requested by counsel and financial advisors for the unsecured creditors' committee in the Chapter 11 case of Furr's Supermarkets Inc., later converted to Chapter 7. The court trimmed the law firm's requested fees by 36 percent, disallowing $250,450, and reduced the financial advisor's requested fees by 47 percent, disallowing $479,814. Previously, the U.S. Trustee settled with the debtor's financial advisor on its fee application, obtaining a 34 percent reduction that cut fees by $180,000.

Preventing Delay and Preserving Assets

The U.S. Trustee takes action to prevent undue delay in Chapter 11 cases and to ensure that proper procedures are followed to protect and enhance the value of estate assets, so the sale of those assets brings as much as possible for creditors. These are examples of cases where the U.S. Trustee's actions helped prevent delay or maximize return to creditors:

• The Bankruptcy Court for the Northern District of Ohio granted the Cleveland office's motion to convert the Chapter 11 case of Graphic Planet Ltd. to Chapter 7, based on the debtor's failure to pay its employees and remit payroll withholding taxes, and its misuse of funds. Both pre- and post-petition, the company's president diverted employee health care and 401(k) contributions, causing employees to lose health care coverage and more than $50,000 in 401(k) contributions.

• The Salt Lake City office was instrumental in obtaining the conversion to Chapter 7 of related Chapter 11 cases filed by Wynn Co. and W.F.G. Acceptance Inc. The debtors allegedly engaged in a multi-state, multi-million dollar Ponzi scheme involving the marketing of supposedly safe investments secured by automobile contracts. The victims were primarily elderly individuals who had either mortgaged real estate holdings or drawn on retirement investments and savings to invest with the debtor. At the Section 341 meeting, more than

Harry Truslow

400 angry investors and purchasers of cars with no titles confronted the debtors' principals. Security officers from the U.S. Marshal were present to keep the peace.

• Based on the U.S. Trustee's objections, Chapter 11 debtor Lagniappe Hospital Inc. and its owner Camelot Healthcare LLC agreed to return $600,000 to the debtor and the debtor's health insurance claims account and to pay $940,790 in post-petition federal and state taxes. The bankruptcy analyst in the Shreveport office discovered unauthorized payments and misdirected funds, and negotiated the stipulations for the payments.

• Agreeing with the Pittsburgh office and the Chapter 11 trustee for Life Service Systems Inc., the Bankruptcy Court for the Western District of Pennsylvania ruled that a transaction involving a member of the unsecured creditors' committee may constitute a breach of fiduciary duty even if the transaction does not involve bankruptcy estate property. A member of the creditors' committee in the bankruptcy case of Life Service Systems conspired with an entity that controlled the debtor to transfer valuable Housing and Urban Development grants from the debtor to the committee member. The Court of Appeals for the Third Circuit ruled that the grants did not belong to the bankruptcy estate, but sent the case back for the bankruptcy court to determine whether the committee member nonetheless breached its fiduciary duty. On remand, the bankruptcy court upheld the position of the U.S. Trustee and the Chapter 11 trustee that the committee member's actions violated its fiduciary duty to act on behalf of all unsecured creditors.

"By examining the debtor's financial reports, we found numerous unauthorized payments to insiders–both individuals and related corporate entities. Once we discovered these payments, the debtor shifted to making similar payments out of the health insurance trust account, probably assuming we wouldn't find them. After we discovered the various authorized payments and misdirected funds, we contacted the Assistant U.S. Attorney who handled civil matters for the Internal Revenue Service. We met on numerous occasions and planned strategy as new information became available."

Harry Truslow,
Bankruptcy Analyst,
Shreveport

Chapter 6
Trustee Oversight



Photo 1: New Trustee Meeting, National Advocacy Center, Columbia, S.C.
Photo 2: Victor Magnusen, Marty Hallowell, Stephen Schoenfeld, and Suzanne Hazard, EOUST
Photo 3: Ken Dennis, San Diego

Most bankruptcy cases in Chapters 7, 12, and 13 are administered by private bankruptcy trustees appointed and supervised by the U.S. Trustee. The private trustee, who is not a government employee, acts as a "fiduciary"–a person legally entrusted with the property of others. He or she administers assets for the benefit of creditors and has the legal duty to act in the best interest of creditors and the estate.

The U.S. Trustee Program promotes the effectiveness of the bankruptcy system by appointing and regulating private trustees who administer bankruptcy cases expeditiously and maximize the return to creditors. The Program trains trustees and evaluates their overall performance, reviews their financial operations, ensures the effective administration of estate assets, and intervenes to prevent loss of estate assets when embezzlement, mismanagement, or other improper activity is discovered.

Chapter 7 Trustees

Chapter 7 trustees are often referred to as "panel trustees" because they are appointed by the U.S. Trustee to a panel in each judicial district. Chapter 7 cases generally are assigned to the panel trustees through a blind rotation process to prevent the debtor or debtor's attorney from "trustee shopping"–attempting to have a case assigned to a particular trustee.

The U.S. Trustee appoints panel trustees for a one-year renewable term. The qualifications for appointment are established by the Attorney General under 28 U.S.C. § 586(d) and published at 28 C.F.R. § 58; additional eligibility requirements are set forth in 11 U.S.C. § 321. Panel trustees are not government employees, and many of them have a separate business or profession such as a law or accounting practice. A trustee's appointment to the panel is conditioned upon the successful completion of a background investigation, and trustees are subject to re-investigation every five years.

Oversight Duties

Among the main features of panel trustee oversight are:

- Providing training for newly appointed panel trustees and ongoing training for all panel trustees thereafter.
- Reviewing interim reports on receipts, disbursements, and other transactions during the case to monitor the progress of case administration, and reviewing final reports to ensure that all assets were properly administered and the proceeds properly distributed.
- Reviewing trustee and professional fees sought in Chapter 7 asset cases.
- Auditing and examining the trustees' accounting and cash management systems.
- Conducting a biennial written review of every trustee's performance.
- Seeking civil remedies for trustee impropriety or incompetence.

The number of Chapter 7 panel trustees has remained relatively constant over the past decade, ranging from a high of 1,294 in 1992 to a low of 1,108 in 1994. As of September 30, 2002, 1,210 trustees served on Chapter 7 panels throughout the United States and its territories (excluding North Carolina and Alabama). In FY 2002, these trustees administered 1,047,969 Chapter 7 cases.

Chapter 7 trustees closed over 39,000 asset cases during FY 2002, generating $1.4 billion in funds. This is the largest number of asset cases closed in one year since the Program began keeping these records in 1992. Secured, priority unsecured, and general unsecured creditors received $785 million or 57 percent of the funds recovered. The balance was devoted to paying fees and administrative expenses.

The Program and the Chapter 7 trustees worked together in FY 2002 to enhance the accuracy and specificity of Chapter 7 bankruptcy statistics by implementing the Uniform Transaction Codes, which were created by the Program with significant input from the trustees. The Uniform Transaction Codes provide a consistent chart of accounts for trustees to use when reporting transactional and case closing information to the U.S. Trustees. When fully implemented, the Uniform Transaction Codes will enable the Program to provide a more complete picture of the assets administered and funds distributed in Chapter 7 cases.

In FY 2002, the Program continued its oversight activities aimed at ensuring the prompt administration of assets and closure of cases. As of October 15, 2002, out of 283,497 open Chapter 7 asset cases, only 2 percent–6,052 cases–had been open for three or more years.

Streamlining Efforts

Streamlining efforts commenced by the Program in FY 2001 continued in FY 2002. Most notably, in April 2002 the Program authorized panel trustees to file interim reports annually instead of semi-annually, subject to the U.S. Trustee's discretion to require more frequent reporting when appropriate, allowing Program staff to focus their attention upon identified areas of risk and upon civil enforcement. Although the reporting requirements were reduced, panel trustees continue to be responsible for timely and efficient case administration by monitoring their cases and meeting deadlines to ensure that funds available for creditors are maximized.

The Program also continued to review its Chapter 7 oversight processes for cost- and time-saving opportunities. Interim and final report review procedures were updated and simplified. Further, the Program's field exam procedures were reassessed and streamlined. Based upon three years of experience with the field exam, Program personnel simplified the exam protocol without sacrificing its integrity. These changes may reduce the time spent on a field exam by as much as one-half.

During FY 2002, the Department of Justice's Office of the Inspector General and several independent accounting firms conducted 180 audits of Chapter 7 panel trustee operations, and U.S. Trustee staff conducted approximately 150 field exams. From these audits and field exams, trustees received a rating of "adequate," "adequate with exceptions," or "inadequate." The percentage of trustees receiving an "inadequate" rating declined by half over the past 10 years, from 20 percent in FY 1992 to about 10 percent in FY 2002.

Chapter 12 and Chapter 13 Trustees

Chapter 12 and Chapter 13 cases are filed by debtors who are, respectively, family farmers and individuals with regular income. Chapter 12 and Chapter 13 trustees are called "standing trustees" because, pursuant to statute, they have a standing appointment from the U.S. Trustee to administer cases within a particular geographic area. Standing 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.

Standing trustees are not government employees. The qualifications for appointment as a standing trustee are established by the Attorney General under 28 U.S.C. § 586(d) and published at 28 C.F.R. § 58. A standing trustee appointment may result from the departure of a prior trustee or the need for an additional trustee in a geographic area. The appointment of a standing trustee is conditioned upon the successful completion of a background investigation, and standing trustees are subject to re-investigations every five years. During FY 2002, there were 183 Chapter 13 standing trustees and 53 Chapter 12 standing trustees.

Standing trustee operations vary from place to place. For example, some operations cover entire states, while others handle cases in a single metropolitan area; staff sizes range from two employees to 45. Differences are often the result of case loads or the need to provide service in large geographic areas. Nationwide, the standing trustees collected over $4 billion in FY 2002, averaging over $22 million per trustee, with the largest trustee operations administering over $100 million.

Oversight Duties

The Program is responsible for maintaining the integrity of the bankruptcy system, and thus its standing trustee oversight activities emphasize the control of trust funds as well as the administration of cases.

Given the volume of money that flows through a standing trustee operation, the Program ensures that trust funds are adequately protected from theft and from incorrect disbursement caused by inadequate or faulty procedures. Chapter 13 trustees are audited annually by independent auditing firms; Chapter 12 trustees, who administer a significantly lower volume of receipts, are audited every three years. These audits cover not only financial issues but also management issues such as compliance with Program policies and internal processes. Program staff work with standing trustees to resolve deficiencies disclosed in the audits. During FY 2002, 195 full-scope audits were conducted.

Periodically the standing trustees are evaluated on several key areas and provided with a written evaluation report. Approximately 233 evaluations were conducted in FY 2002. Program staff also visit trustee offices periodically to review and report upon case administration and financial controls.

To help ensure that standing trustees carry out their duties as effectively as possible, the Program offers training for both new and experienced trustees. The Program typically provides opportunities for newly appointed trustees to visit one or more trust operations to observe how the experienced trustees administer cases and set up their offices. In addition, regions hold periodic training sessions on such topics as recent case law, internal controls, management issues, computer security, and civil enforcement.

In FY 2002, the Program established the Standing Trustee Pledge of Excellence, which sets forth basic principles to guide Chapter 13 trustees in the operation of their offices and administration of cases. The principles identify core themes in terms of a Chapter 13 trustee's commitment to service. They make clear that creditors, debtors, attorneys, judges, and others who come into contact with standing trustees are entitled to service that adheres to the highest standards of professional, moral, and ethical conduct.

Embezzlements From Trust Operations

Standing trustees maintain internal controls and safeguards to prevent loss of funds through embezzlement or other fraudulent acts. Nevertheless, standing trustee operations occasionally become targets for embezzlement or theft. When a loss occurs, the Program organizes a team of professionals to reconstruct the financial records and assist in any civil and criminal enforcement actions.

In FY 2002, a Chapter 13 trustee discovered that an employee had created a fictitious creditor in the name of a company established under his wife's name. The employee created proofs of claim for the fictitious creditor, resulting in the embezzlement of over $33,000. The employee reimbursed the estate, and subsequently pleaded guilty to one count of embezzlement. During the course of this investigation, an earlier embezzlement by another employee was revealed. That employee created fictitious creditors using names on identification cards he obtained. Using the identification cards, the employee cashed two checks totaling $14,214 at a bank's drive-in window. After the embezzlement was discovered, the employee reimbursed the trustee's insurer.

Two other trustee employee embezzlements were discovered and investigated by the Program during FY 2002. A Chapter 13 trustee's employee intercepted tax refund checks totaling $5,400 and, in at least one instance, forged a debtor's endorsement and listed her own bank account number for deposit. The employee was indicted and ultimately pleaded guilty to one count of bankruptcy fraud. In the other case, in which approximately $6,300 was allegedly stolen from 14 money orders, the investigation is ongoing.

Computer Security

The Program continued in FY 2002 to develop mechanisms for improving the security of information technology systems in standing trustee offices, to ensure that data cannot be manipulated and that personal information about debtors remains secure. To this end, the Program is working with the trustees in a collaborative effort to establish a national computer security center.

Chapter 7
Training and Outreach

Photo 1: Sara Kistler, EOUST
Photo 2: National Advocacy Center, Columbia, S.C.
Photo 3: U.S. Trustee Program Training Session at National Advocacy Center

Employee Training

Training sessions for Program personnel are held at the National Bankruptcy Training Institute, where the Program offers a full range of professional development courses. The Institute, which opened in February 1999, is located within the National Advocacy Center on the campus of the University of South Carolina in Columbia, S.C. The NAC also hosts the national training programs of the U.S. Attorneys and the nation's District Attorneys, with courses designed and developed by the staff of the Office of Legal Education in the Justice Department's Executive Office for U.S. Attorneys. The NAC's state-of-the-art training site includes mock court rooms and built-in electronic facilities for videotaping and projection.

The Institute provides a variety of courses to enhance the professional and management skills of all U.S. Trustee Program employees, including secretaries, legal clerks, legal data technicians, case management specialists, computer specialists, standing trustee coordinators, paralegals, administrative assistants, financial analysts, and attorneys. During FY 2002, the Institute hosted more than 700 attendees at 16 training courses. In addition to continuing to provide the civil enforcement training courses that were first offered in FY 2001, the Institute introduced several new courses to enhance participants' skills and substantive knowledge, including courses on negotiation skills and emerging trends in Chapter 11 bankruptcy.

The Institute's FY 2002 courses were enriched by the participation of a number of nationally known speakers who discussed issues of current interest. Among the speakers at various programs sponsored by the Institute were Chief Judge Joseph F. Anderson of the U.S. District Court for the District of South Carolina, as well as Bankruptcy Judges James Grube, Northern District of California; J. Michael Deasy, District of New Hampshire; Henley Hunter, Western District of Louisiana; Robert J. Kressel, District of Minnesota; and Steven Rhodes, Eastern District of Michigan.

Courses offered in FY 2002 included:

- Civil Enforcement (seven sessions)
- Support Staff Development (two sessions)
- Emerging Trends in Chapter 11
- Chapter 13 Seminar
- Trial Advocacy
- Negotiation Skills
- Management Training
- Administrative Officers Conference
- Case Managers/Computer Specialists Conference

The Institute is headed by Stephen Goldring, who was appointed to the post in 1998 after serving for 10 years as the Assistant U.S. Trustee in Pittsburgh. Before joining the Program, Goldring worked for 12 years as an Assistant U.S. Attorney in Pittsburgh, including seven years as First Assistant U.S. Attorney.

Other Training

Another aspect of the Program's training role is its commitment to providing professionals from outside the Program with education about bankruptcy-related civil and criminal enforcement. Each year, the Program presents a variety of educational programs for law enforcement personnel from federal, state, and local governments.

Examples of the Program's efforts in FY 2002 to provide training outside the Program include the following:

• Former Los Angeles Assistant U.S. Trustee Terri Andersen (who now heads the Riverside office), Special Assistant U.S. Attorney Sandy Klein, and FBI Special Agent Norma Ballard conducted a bankruptcy fraud training program for more than 40 Secret Service agents from Los Angeles. The areas of training included an overview of the bankruptcy system, the role of the U.S. Trustee, and bankruptcy fraud referrals and prosecutions, with special emphasis upon credit card bust-outs and identity theft.

• At the annual meeting of the National Bankruptcy Fraud Working Group, Newark Acting Assistant U.S. Trustee Martha Hildebrandt participated in a panel discussion on investigating credit card bust-outs.

• A group of probation officers and pre-sentence writers in the Northern District of Texas learned "basic bankruptcy" from Dallas Bankruptcy Analysts A.L. Nickerson and Brad Perdue and Trial Attorney Mary Frances Durham. The training session included a description of the information available from the bankruptcy documents and the bankruptcy clerk's office, as well as the roles of the U.S. Trustee and the private trustees.

• The San Francisco office conducted a seminar on the fundamentals of bankruptcy law for the Department of Labor's Office of the Solicitor. The three-hour program, attended by DOL attorneys and supervisors based in San Francisco and Los Angeles, grew out of the San Francisco and San Jose offices' coordination with DOL to help former employees of debtor companies retrieve contributions they made to 401(k) plans that were not administered after the companies filed bankruptcy.

• Along with the U.S. Attorney for the Northern District of Georgia, Atlanta Assistant U.S. Trustee Guy Gebhardt spoke to the Georgia Real Estate Fraud Coalition, a group representing law enforcement agencies, mortgage lenders, title insurers, attorneys, real estate appraisers, and real estate brokers organized to combat widespread mortgage fraud in the metropolitan Atlanta area and provide education about the issue. Topics included the ways in which perpetrators of mortgage fraud use bankruptcy fraud to advance their schemes. The U.S. Attorney and the U.S. Trustee cooperate closely in the Northern District, investigating many mortgage fraud schemes that contain bankruptcy fraud as a critical element.

Public Outreach

In addition to its various training activities, the Program engages in public outreach to inform and educate citizens about the bankruptcy system, Program activities, and consumer issues.

Web Site

The Program's web site at www.usdoj.gov/ust makes a wealth of information easily accessible to bankruptcy practitioners, consumers, the media, and other site visitors. The site's contents include: contact information for every Program office and every private Chapter 7, 12, and 13 trustee; links to U.S. Trustee regional web sites, which contain information on local procedures and issues; a library of bankruptcy-related articles written by Program staff; press releases and fact sheets; Program manuals, handbooks, forms, and similar materials; and regulations promulgated by the Program, as well as administrative rulings issued under those regulations.

Sue Ann Slates

Articles

To increase public understanding about bankruptcy and the U.S. Trustees' responsibilities and policies, the Program serves as a resource for media inquiries about bankruptcy and publishes regular columns in the *American Bankruptcy Institute Journal* and the two publications of the private trustee organizations, *NABTalk* and the *NACCT Quarterly*. Program employees also write articles for bar association journals, accountancy journals, and other professional publications.

Events and Public Appearances

U.S. Trustees and Program staff are often invited by bar associations, professional organizations, law schools, other government agencies, and other groups to speak about the bankruptcy system and the Program's activities. In addition, Program employees attend job fairs to talk about employment opportunities in the bankruptcy system–not only within the Program, but also as private trustees, bankruptcy attorneys, accountants, auctioneers, real estate appraisers, and related professionals.

For example, in FY 2002:

• Several meetings with foreign delegations on official visits to the EOUST in Washington, D.C., were coordinated by Trial Attorney Sue Ann Slates of the Office of General Counsel. Officials from Japan, Russia, and Bulgaria were among those visiting to learn about and discuss the U.S. bankruptcy system and the U.S. Trustee Program.

• As a panelist for a continuing bankruptcy law seminar sponsored by Virginia Continuing Legal Education, Alexandria Trial Attorney B. Amon James discussed attorney ethics and professional issues concerning bankruptcy fraud.

• Wilmington Bankruptcy Analyst Michael West gave a presentation to accounting society members at Philadelphia University regarding the bankruptcy process and the U.S. Trustee Program's mission and role.

• To decrease the number of Chapter 7 cases subject to dismissal for substantial abuse, the Grand Rapids office conducted six full-day seminars on preparing and filing Chapter 13 bankruptcy petitions. More than 200 attorneys and legal assistants attended.

• In cooperation with the bankruptcy clerk's office and New Orleans Metrovision, the New Orleans office taught local high school students about the bankruptcy process and the ramifications of filing bankruptcy. The office staged a mock Section 341 meeting for the student visitors.

• Paralegal Specialist L. Renee Morgan of Sacramento served as a judge for a local credit union's employee speech competition intended to promote financial awareness. Over 100 people listened to the oral competition among the five finalists.

• Attorneys from the Houston and Corpus Christi offices participated as panelists discussing complex Chapter 11 cases at a seminar held at the South Texas College of Law in Houston.

• Region 11 U.S. Trustee Ira Bodenstein of Chicago spoke to a delegation of judges, attorneys, and professors from the People's Republic of China on the roles of the U.S. Trustee Program and the Chapter 7 trustees.

"I thoroughly enjoy helping members of foreign delegations learn about our legal system and the U.S. Trustee Program. I research each country's customs so I can help visitors feel comfortable when they come to our office. We get to know one another not just as government representatives, but also as individuals who share an interest in protecting and improving our respective legal systems."

Sue Ann Slates,
Trial Attorney,
EOUST

Marjorie Gibson

"When we started the 'brown bag' lunch sessions, we were worried they would draw only a few attendees. Instead, the response was overwhelming, and we often had to scramble to find extra chairs. We were even asked to buy a microphone so the attorneys could catch every word."

Marjorie Gibson,
Bankruptcy Analyst,
Los Angeles

• Led by Trial Attorney Margaux Ross and Bankruptcy Analyst Marjorie Gibson, the Los Angeles office prepared and hosted a series of continuing education programs for consumer debtors' attorneys. Topics included Section 707(b) dismissal for substantial abuse; exemption of pensions and individual retirement accounts; reaffirmation agreements; non-dischargeable debts; post-confirmation issues in Chapter 13; para-professionals and the unauthorized practice of law; and local Bankruptcy Rules.

• Assistant U.S. Trustee Katherine Vance of Tulsa and Assistant U.S. Trustee Herb Graves of Oklahoma City were each recognized by the Oklahoma Bar Association during FY 2002. In December 2001, Vance received the association's Neil E. Bogan Professionalism Award for conduct, honesty, integrity, and courtesy that best represents the highest standards of the legal profession. In July 2002, Graves received the Professional Service Award for his contributions as chair of the bar's continuing legal education committee.

• Finally, Program employees contribute to their communities as well as their workplaces. Tulsa Trial Attorney Paul Thomas was selected to carry the Olympic Torch as it made its way to Salt Lake City for the 2002 Winter Olympics. He was honored for serving his community in a special way, through activities that include working with the school district to improve educational programs for disabled students and volunteering for the Special Olympics.

Chapter 8
Information Technology and Data Collection

Photo 1: Back three rows, left to right: Jack Kuhn, Kansas City; Keith Manikowski, Chicago; Joel Atkinson, Columbia, S.C.; Randy Underwood, Memphis; Robert McGinty, Philadelphia; Diane Coffman, New Orleans; Katherine Wieland, Wichita; Sandra Nixon, Dallas; LaDonna Ralph, Indianapolis; Terri Bevan, Minneapolis; Julie Stark, Seattle; Monique Bourque, EOUST; Debbie Malik, Phoenix; Gloria Hodges, Houston; Dave Matras, Cleveland; Francine Castillo, Phoenix; Carol Porter, Manhattan; LaSharion McClellan, Dallas; Luis Masforroll, Boston; Mike Waite, EOUST; Charles Spangenberg, San Francisco; Terry Hayes, San Diego. Front row, left to right: Bernie Onstad, Denver; Lori Boswell, Los Angeles; Jerrold Chandler, EOUST

Photo 2: Monique Bourque, EOUST, and Guy Van Baalen, Utica

Photo 3: Brian Masumoto, Mary Tom, and Susan Doherty, Manhattan

The continued rise in bankruptcy case filings over the past few years, the federal court system's migration to electronic case filing, and the Program's increased focus upon civil and criminal enforcement have required the Program to develop increasingly efficient and integrated information technology systems. During FY 2002, the Program continued to modernize its automated case management system, while launching several new automation efforts including the significant accomplishments reporting system, the automated Chapter 11 professional fee application review program, and the Chapter 7 trustee electronic data exchange. The Program also maintained the automated systems that allow it to effectively perform core functions that include managing more than 1 million new cases each year, supervising private trustees, appearing as a party in court, and collecting statutorily imposed fees.

Significant Accomplishments Reporting System

Starting in FY 2001, U.S. Trustees were asked to report the significant accomplishments of each of their offices in order to enable the Program to aggregate its accomplishments, identify trends and best practices, and measure its success in key areas of civil enforcement, criminal enforcement, case administration, and special litigation activities. Significant accomplishments reporting reflects the Justice Department's emphasis on performance-based management and budgeting, and helps Program managers allocate resources and devise strategies to address local problems. It also stresses the importance of accountability at all levels and provides a vehicle for managers to measure and reward success. Moreover, the information obtained through significant accomplishments reporting enhances the Program's ability to report regularly and accurately to Congress and to the Department.

During FY 2002, the Significant Accomplishments Reporting System was transformed from a manual reporting system to an automated web browser-based system designed to simplify data entry and streamline data collection. This system, which was pilot-tested in six Program offices in FY 2002, allows staff to record enforcement actions in a standard format as they occur; allows managers to track case status and adjust enforcement priorities as appropriate; and allows the Program to run various new statistical reports.

Much of the information contained in this annual report is derived from the Significant Accomplishments Reporting System. As such, the annual report reflects a snapshot in time and therefore not all figures may balance. For example, the numbers of motions filed and motions decided in a given period may not match because some cases remain pending.

Automated Case Management System

For more than 16 years, the work of the U.S. Trustee Program has been supported by a decentralized case management system called the Automated Case Management System (ACMS), which was designed to support the U.S. Trustees' unique role in managing bankruptcy cases and monitoring the work of private trustees. To keep up with changes in technology and increased Program needs, ACMS is being modernized to improve user access, integrate multiple data bases, and meet the long-term goal of a centralized computing system.

During FY 2001, the Program's technical staff devoted significant resources to a project designed to increase the flexibility of ACMS by allowing case management data to be combined with information contained in other data bases and applications. The first step of the project–called "migrating to the native environment"–involved rewriting the original code in which ACMS was written. The migration was completed in FY 2002, allowing the Program to proceed with its plan to implement a centralized data base for all Program data collection.

Electronic Case Filing

Over the past several years, the federal courts have moved toward the use of an Internet-based electronic case filing system (ECF or e-filing) for the electronic submission of documents to, from, and within the courts. During FY 2002 ECF expanded significantly in the bankruptcy courts, which are at the forefront of the move to this new technology. By the end of FY 2002, 10 more bankruptcy courts had implemented ECF, for a total of 38 out of 105.

ECF offers many advantages, including the ability of parties to file pleadings and retrieve electronically filed documents from any location at any time. Further, ECF reduces the delay between the time a document is electronically filed with the court and the time it is available to the public for review.

Nevertheless, ECF also creates some difficulties that Department and Program officials continue to address. For example, because of the large volume of bankruptcy filings, one of the first issues that arose for the Program was the need to manage the thousands of e-mail messages received by Program offices as a result of electronic service. Other issues include the use of electronic signatures and authentication of documents, e-fraud, privacy concerns, and new case management and archiving techniques. The Program also faces new costs for its basic operations, including court-imposed access fees, and costs for required software and hardware such as scanners, personal computers, and printers.

In FY 2002, senior Program officials continued to work with representatives of the Department and the Judiciary to address these matters and recommend policy changes. In addition, technical Program personnel met regularly with an ECF technical group from the Administrative Office of the U.S. Courts and participated in an ECF working group within the Department. Progress was made on enhancing daily exchange of data between the courts and the Program, to streamline the collection of critical case management data. A long-term goal of the Program is to enhance the data exchange process with the courts by developing national standards for "data enabling" portable document format (PDF) documents. To that end, in FY 2002 the Program began to research and test data tags that can be embedded within a PDF document before it is filed with the court, so data can be easily located and extracted later.

In addition to coordinating with the Department and the courts, in FY 2002 the Program formed a joint working group with the private trustees to address ECF-related business processes and technological changes that will affect the trustees, and to share best practices.

Automated Fee Application Review Program

As Chapter 11 business reorganizations grow larger and more complex, the Program's task of reviewing fee applications submitted by the professionals who are employed in cases becomes more time-consuming. No automated program can determine the ultimate question of the amount of value added in relation to the services rendered. However, to assist in organizing and categorizing the information provided in voluminous fee applications filed in very large cases, in FY 2002 the Program developed a custom fee application review program.

This program was pilot-tested in six Program offices in FY 2002. In selected cases, Program staff coordinate with the court and the professional to receive data electronically from the professional's computer system in a common data transfer format. The fee application review program accepts the electronic data and places it in a combined data base for further analysis. By using the automated fee review program in appropriate cases, the Program can review professional fees more cost-effectively.

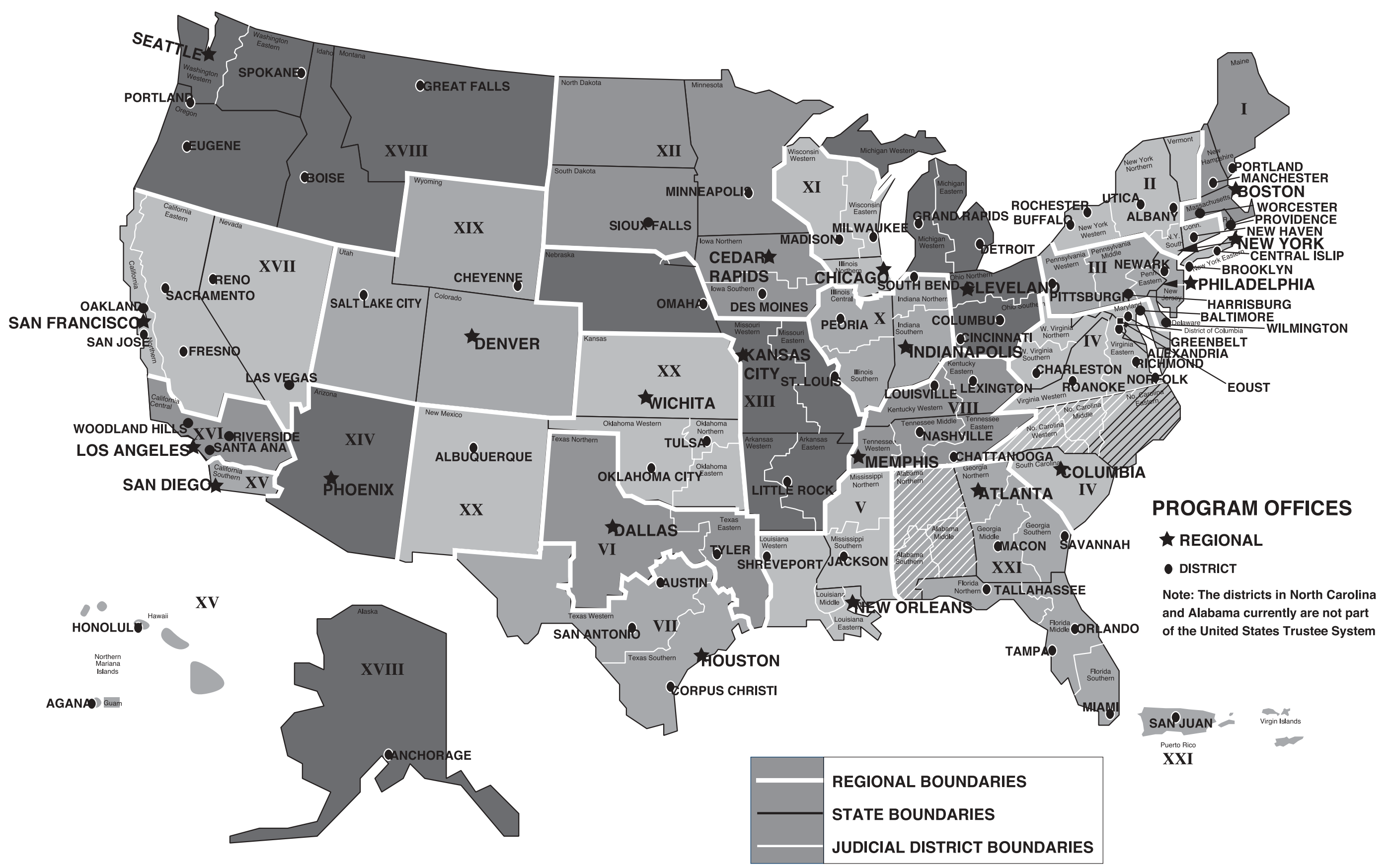
Chapter 7 Trustee Electronic Exchange

Along with the automated fee review program, in FY 2002 the Program began developing an "electronic exchange" process by which to receive data from the Chapter 7 trustees. Program offices regularly receive Chapter 7 trustee reports containing financial data and other information pertaining to each case. In FY 2002, the Program and the Chapter 7 trustees started using Uniform Transaction Codes to standardize the reporting of various types of case transactions. The electronic exchange will build upon these data standardization efforts, allowing the Program to receive this financial data, store it centrally, and generate reports.

Chapter 9

Appendix

United States Trustee Program Map of Regions and Offices



Please visit our web site at http://www.usdoj.gov/ust for office phone numbers and addresses.

U.S. Trustee Program Nationwide Office Locator

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

Regional and Field Offices (BY STATE)

Alaska
Anchorage

Arizona
Phoenix

Arkansas
Little Rock

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

Colorado
Denver

Connecticut
New Haven

Delaware
Wilmington

Florida
Miami
Orlando
Tallahassee
Tampa

Georgia
Atlanta
Macon
Savannah

Hawaii
Honolulu

Idaho
Boise

Illinois
Chicago
Peoria

Indiana
Indianapolis
South Bend

Iowa
Cedar Rapids
Des Moines

Kansas
Wichita

Kentucky
Lexington
Louisville

Louisiana
New Orleans
Shreveport

Maine
Portland

Maryland
Baltimore
Greenbelt

Massachusetts
Boston
Worcester

Michigan
Detroit
Grand Rapids

Minnesota
Minneapolis

Mississippi
Jackson

Missouri
Kansas City
St. Louis

Montana
Great Falls

Nebraska
Omaha

Nevada
Las Vegas
Reno

New hampshire
Manchester

New jersey
Newark

New mexico
Albuquerque

New york
Albany
Brooklyn
Buffalo
Central Islip
New York City
Rochester
Utica

Ohio
Cincinnati
Cleveland
Columbus

Oklahoma
Oklahoma City
Tulsa

Oregon
Eugene
Portland

Pennsylvania
Harrisburg
Philadelphia
Pittsburgh

Puerto Rico
San Juan

Rhode Island
Providence

South Carolina
Columbia

South Dakota
Sioux Falls

Tennessee
Chattanooga
Memphis
Nashville

Texas
Austin
Corpus Christi
Dallas
Houston
San Antonio
Tyler

Utah
Salt Lake City

Virginia
Alexandria
Norfolk
Richmond
Roanoke

Washington
Seattle
Spokane

West Virginia
Charleston

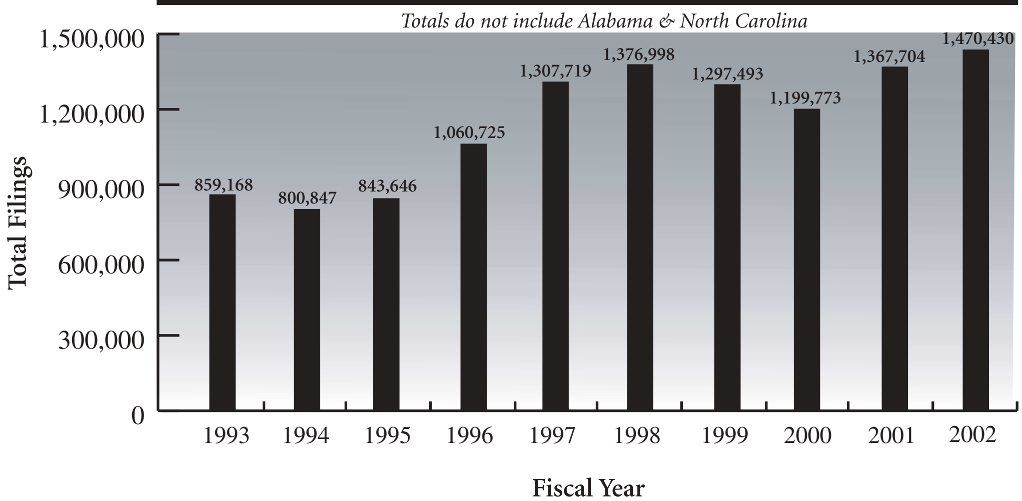
Wisconsin
Madison
Milwaukee

Wyoming
Cheyenne

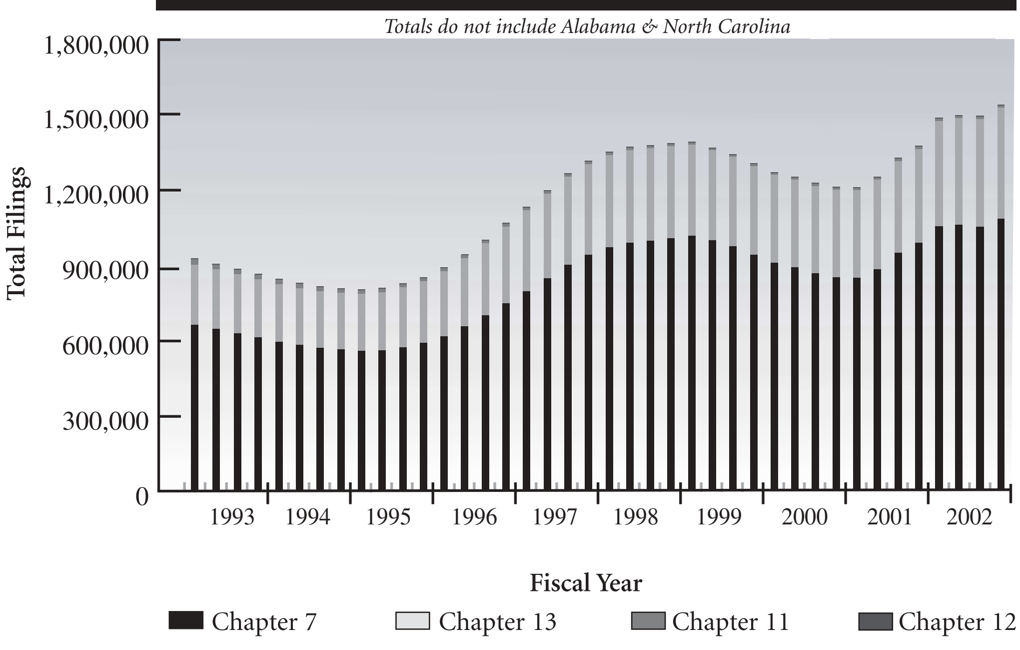
U.S. Trustee Program Civil Enforcement Actions–Fiscal Year 2002

Type of Action	Number of Inquiries and Formal Actions	Estimated Financial Impact
11 U.S.C. § 707(a) Dismissal for Cause	5,184	N/A
11 U.S.C. § 707(b) Dismissal for Substantial Abuse	15,671	$59,198,776
11 U.S.C. § 727 Denial or Revocation of Discharge	2,200	$40,917,494
11 U.S.C. § 110 Actions Against Bankruptcy Petition Preparers	4,402	$545,380
11 U.S.C. § 329 Disgorgement of Attorneys' Fees	1,505	$1,304,868
11 U.S.C. § 1104 Appointment of Trustee or Examiner	419	N/A
Actions for Attorney Misconduct	784	N/A
Total	**30,165**	**$101,966,518**

TOTAL BANKRUPTCY FILINGS NATIONWIDE
Fiscal Years 1993-2002

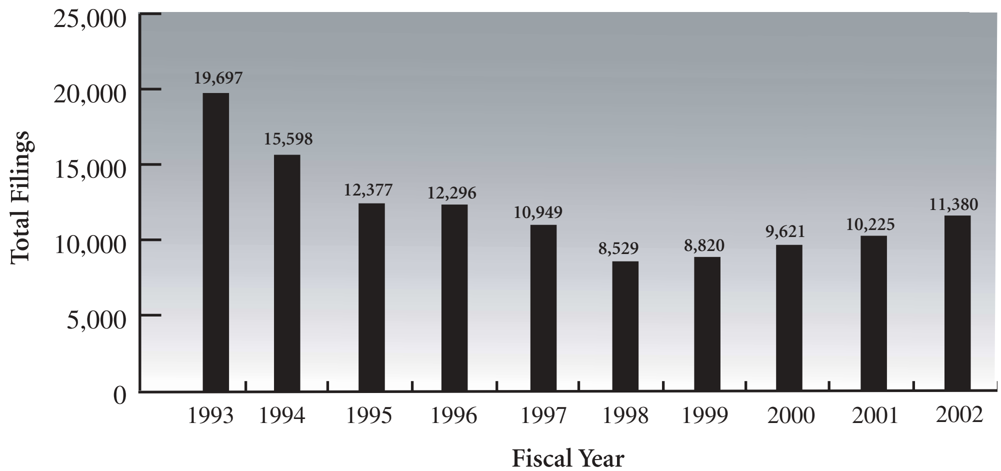


TOTAL BANKRUPTCY FILINGS BY CHAPTER
Fiscal Years 1993-2002



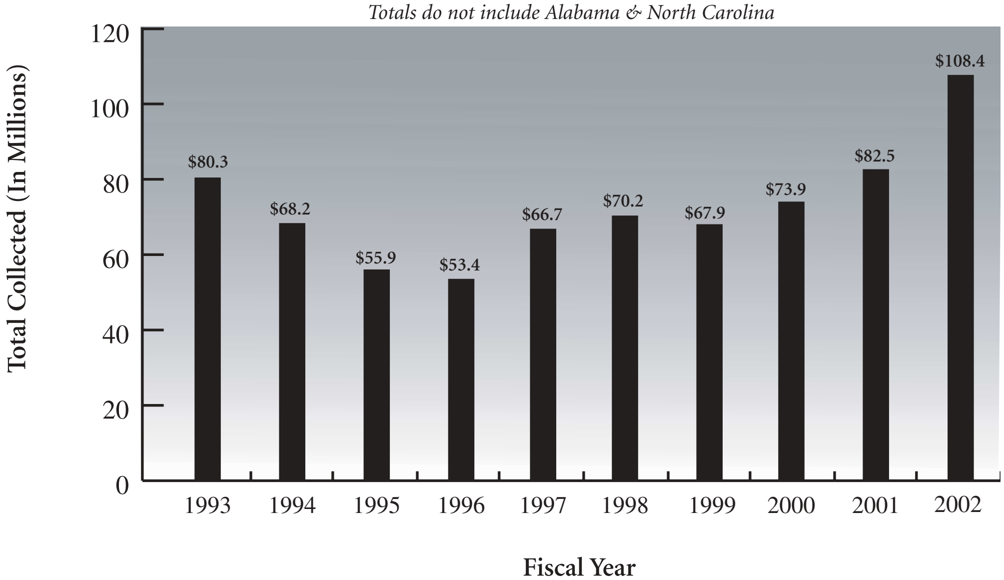
Chapter 11 Filings Nationwide
Fiscal Years 1993-2002

Totals do not include Alabama & North Carolina



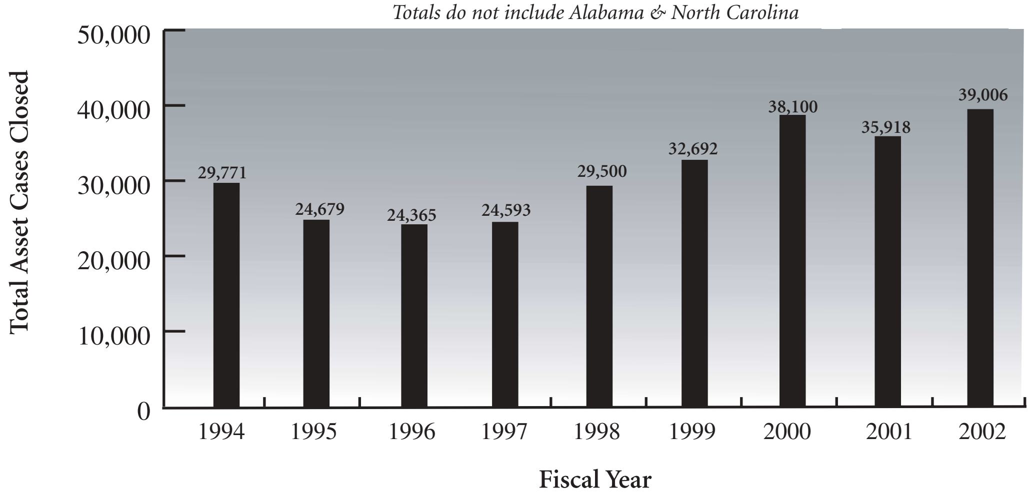
Chapter 11 Quarterly Fee Collections
Total Collected Fiscal Years 1993-2002

Totals do not include Alabama & North Carolina



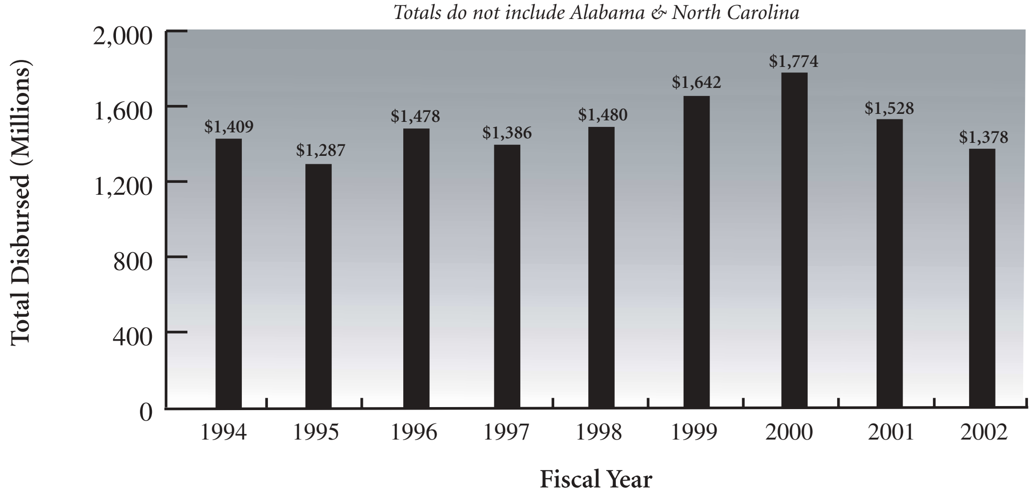
Chapter 7 Asset Cases Closed
Fiscal Years 1994-2002

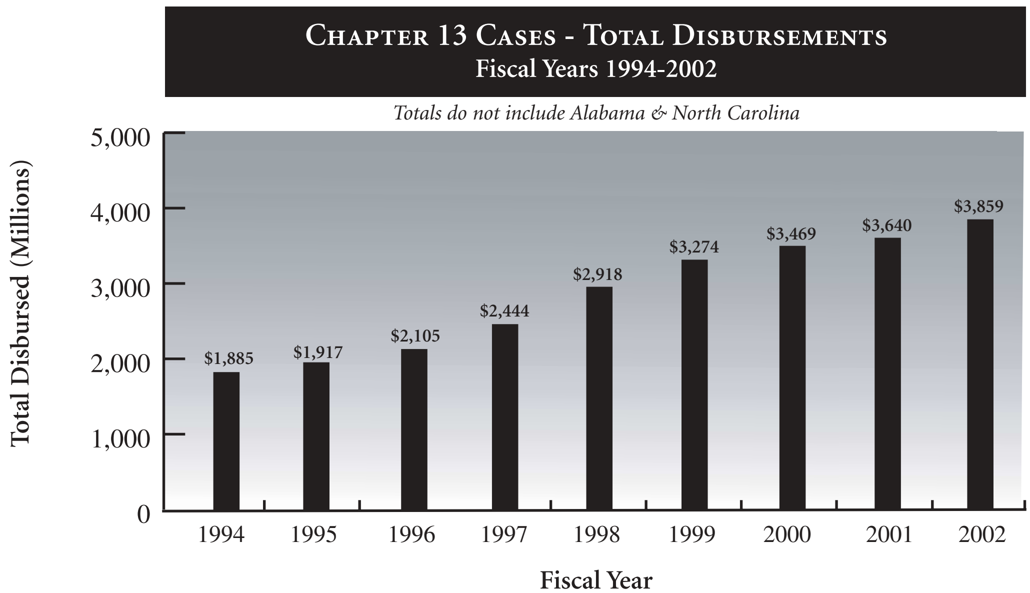
Totals do not include Alabama & North Carolina



Chapter 7 Cases - Total Disbursements
Fiscal Years 1994-2002

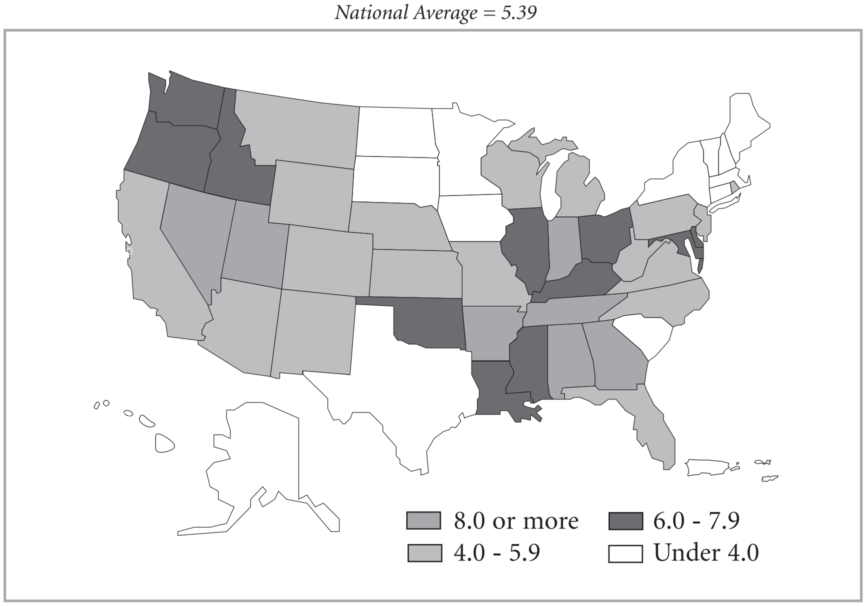
Totals do not include Alabama & North Carolina



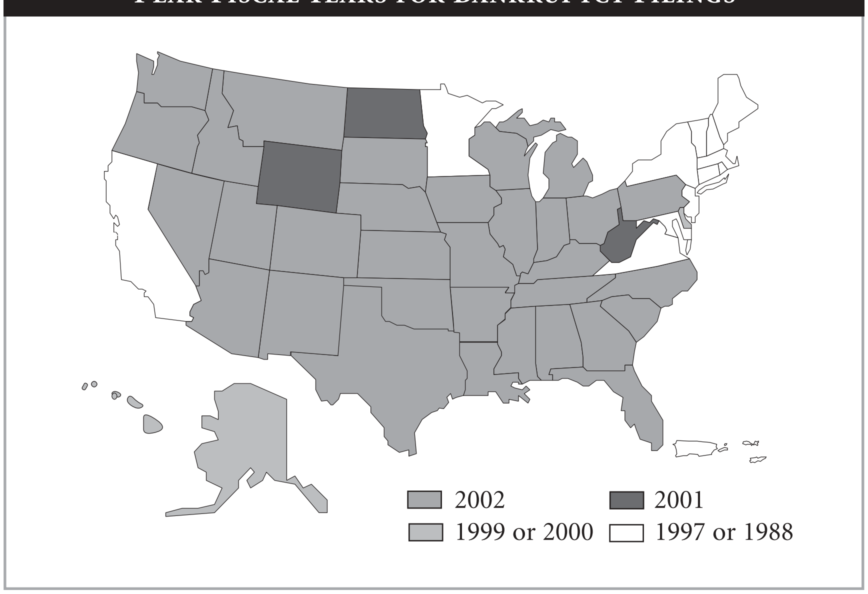

Chapter 13 Cases - Total Disbursements
Fiscal Years 1994-2002
Totals do not include Alabama & North Carolina
Total Disbursed (Millions)
5,000
4,000
3,000
2,000
1,000
0
$1,885
$1,917
$2,105
$2,444
$2,918
$3,274
$3,469
$3,640
$3,859
1994
1995
1996
1997
1998
1999
2000
2001
2002
Fiscal Year

Bankruptcy Filings Relative to Population
(Cases Filed Per 1,000 Population Fiscal Year 2002)

National Average = 5.39



Peak Fiscal Years for Bankruptcy Filings



Standing Trustee Pledge of Excellence

Standing Trustees are committed to excellence and to providing a high level of trust and service to chapter 13 debtors and creditors. Creditors, debtors, attorneys, judges and others who come into contact with Standing Trustees are entitled to service which adheres to the highest standards of professional, moral and ethical conduct.

1. The trustee's office should be open and operating Monday through Friday during regular business hours.

2. The trustee should have a system in place to promptly respond in a meaningful manner to inquiries from debtors, creditors, attorneys, and other interested parties.

3. If the trustee is not personally available, the trustee should have competent staff available to assist or to respond to inquiries.

4. The trustee should work to ensure that debtors comply with their obligations under the Bankruptcy Code and Rules.

5. The trustee should work to ensure that debtors comply with the provisions of their plan and should take appropriate action if the debtor fails to commence plan payments when required or if there is a subsequent default in plan performance.

6. The trustee should maintain a system which efficiently tracks the progress and the receipts and disbursements in every chapter 13 case, from the time it is filed until the case is closed.

7. The trustee should have a system to timely and accurately record all receipts and disbursements on the appropriate debtor ledger.

8. The trustee should disburse plan payments to creditors on a monthly basis, and should have procedures in place to properly classify and pay creditors' claims and to detect and recover any erroneous payments.

9. The trustee should ensure that all trust account ledgers and accounts are balanced on a monthly basis and should have a procedure to regularly review all cases with significantly large balances on hand or other fund irregularities.

10. The trustee should maintain a reasonably comprehensive system of internal controls over accounting and office operations, both paper and electronic, to safeguard estate assets and trust funds.

Notes