



**United States Department of Justice  
Executive Office for United States Trustees**

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**United States Trustee Program  
Annual Report of Significant Accomplishments  
Fiscal Year 2015**

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## Message from the Director

Enhancing the integrity and efficiency of the bankruptcy system for the benefit of all stakeholders—debtors, creditors, and the public—has been our mission for several years now, but it bears repeating because it is something we in the United States Trustee Program (USTP) believe in so strongly. We translate our mission into action with three overarching priorities: (1) to faithfully carry out the law with prudence and discretion; (2) to combat fraud and abuse committed by debtors, creditors, professionals, and others; and (3) to promote management and professional accountability in chapter 11 business cases.

The USTP has distinguished itself by remaining on course, while at the same time exhibiting agility in responding to emerging demands and pursuing litigation and other actions that fulfill our mandates. In Fiscal Year (FY) 2015, the USTP took nearly 32,000 civil enforcement actions, including those resolved out of court, for a monetary impact of more than \$1 billion in debts not discharged and other relief. We oversaw approximately 1,400 private trustees who administered about 1.8 million ongoing cases and distributed more than \$10 billion in estate assets. We made more than 2,100 criminal referrals and worked cooperatively with our federal and state law enforcement partners in the investigation and prosecution of criminal cases. And we actively participated in chapter 11 cases with assets totaling billions of dollars to ensure that the parties and professionals complied with the law and respected the rights of all stakeholders.

These numbers tell only part of our story, though. As described in more detail in the pages that follow, we also have focused on several signature enforcement areas. Chief among them has been addressing multi-jurisdictional violations through the coordinated enforcement efforts of our field offices throughout the country. Notably, this year the USTP entered into two national settlements that brought us closer to completion of a major phase of our efforts to address mortgage servicer violations of bankruptcy law and to protect chapter 13 homeowners. Those settlements provided more than \$130 million in relief to homeowners and addressed improper practices in bankruptcy by JPMorgan Chase Bank N.A. and Wells Fargo Bank N.A. that impacted about 100,000 homeowners.

Outside of the mortgage arena, the USTP also enhanced its work to address questionable conduct by creditors that engage in the buying, selling, and filing of unsecured consumer debt. We have investigated systemic violations ranging from the robo-signing of bankruptcy court documents, the collection of discharged debt, and abuse of process through the filing of high volumes of stale debt claims. The actions we have brought are against major parties that appear in many thousands of cases each year, so the impact is far-reaching and may lead to the transformation of practices that will significantly improve the integrity and efficiency of the bankruptcy process going forward.

Lastly, the USTP continued to play a significant role in the oversight of bankruptcy professionals. Among other things, we police conflicts of interest and monitor professional fees. That role was even more prominent this year as we addressed challenges to the Supreme Court's ruling in *Baker Botts, L.L.P. v. ASARCO, LLC*, which held that fees for work performed defending a bankruptcy professional's fee application are impermissible and cannot be reimbursed by a bankruptcy estate. The USTP correctly anticipated there would be attempts to

circumvent the *ASARCO* ruling and we have successfully vindicated the Supreme Court's decision. Further, we have implemented our "Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed under 11 U.S.C. § 330 for Attorneys in Larger Chapter 11 Cases," including ensuring that fees sought to be paid through the bankruptcy estate are subject to market discipline.

I encourage you to read this Annual Report to learn more about these and the many other accomplishments of the USTP in FY 2015. The facts and figures clearly demonstrate the impact we are having and provide the foundation on which the USTP can achieve even greater results for the bankruptcy system and the American economy in the future.

Sincerely,

A handwritten signature in black ink, appearing to read "Clifford J. White III". The signature is stylized with a large initial 'C' and a long horizontal stroke at the end.

Clifford J. White III  
Director

## Chapter 1. About the U.S. Trustee Program

### Mission

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

The Program oversees the administration of, and has standing to participate in, every individual and business bankruptcy case filed in the 88 federal judicial districts under its jurisdiction.<sup>1</sup> To ensure the integrity of the bankruptcy system, the Program employs a broad range of enforcement and oversight activities.

The U.S. Trustee Program:

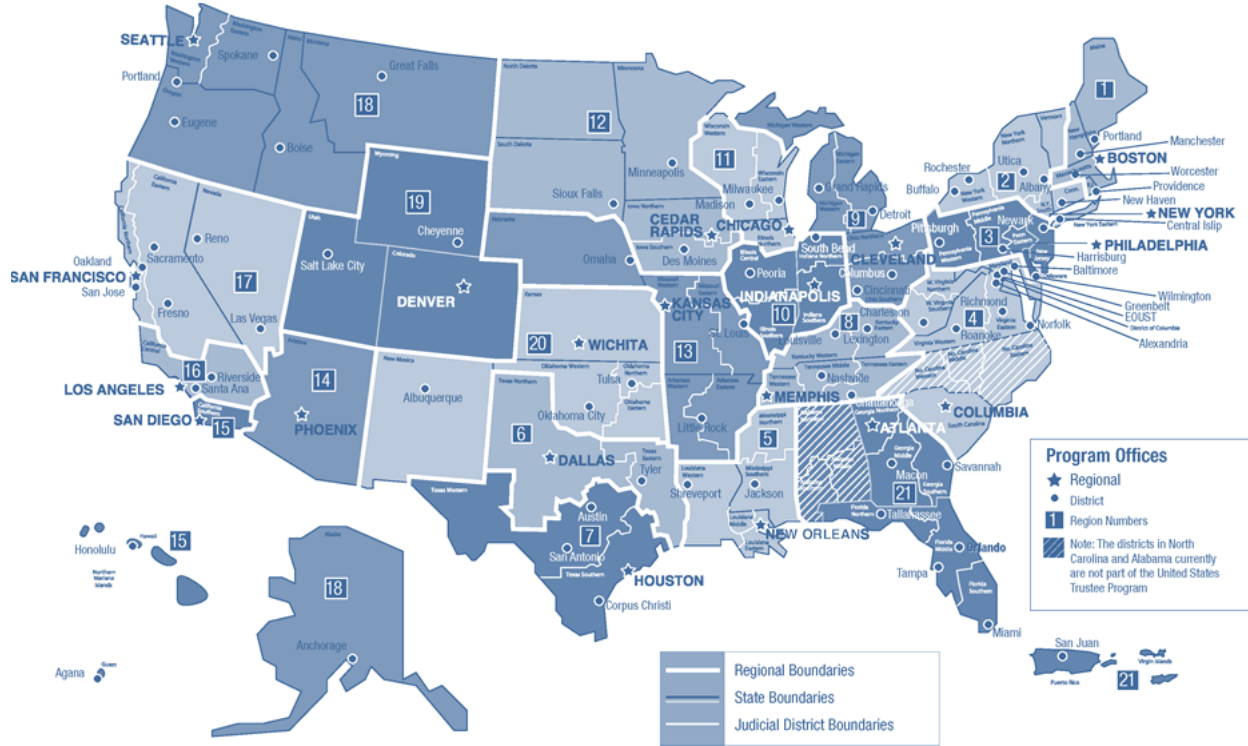
- Enforces the Bankruptcy Code through civil litigation.
- Fights abusive mortgage servicing practices that harm homeowners in bankruptcy.
- Protects consumer debtors from scam operators and others who use the bankruptcy system to perpetrate fraud.
- Appoints and oversees trustees and examiners in chapter 11 business reorganization cases where company officials engaged in fraud or gross mismanagement.
- Appoints and supervises the private bankruptcy trustees who distribute over \$10 billion in assets each year in cases under chapters 7, 12, and 13 of the Bankruptcy Code.
- Curbs excessive professional fees and improper management bonuses in chapter 11 business reorganization cases.
- Identifies and refers suspected bankruptcy crimes to United States Attorneys, and assists in criminal investigations and prosecutions.
- Participates in appeals to the bankruptcy appellate panels, district courts, circuit courts of appeals, and the U.S. Supreme Court.
- Takes action against debtors who conceal their assets, file inaccurate information, or abuse the bankruptcy system in other ways.
- Approves and monitors pre-bankruptcy credit counseling agencies and post-bankruptcy financial education providers.

### Organization and Staffing

The USTP is led by a Director headquartered in the Executive Office for U.S. Trustees located in Washington, DC. The Executive Office oversees the Program by providing leadership, central policy and management direction, and administrative and information technology services to the field offices. The Program's 21 regions are managed by U.S. Trustees appointed by the Attorney General and include 93 field office locations supervised by Assistant U.S. Trustees.

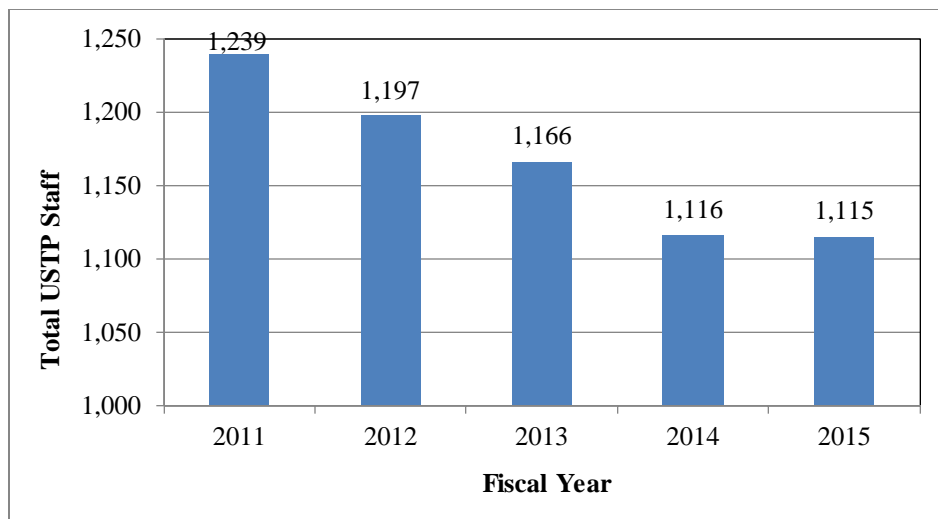
<sup>1</sup> The USTP has jurisdiction in all judicial districts except those in Alabama and North Carolina.

**Figure 1.1. USTP Map of Regions and Offices**



At the conclusion of FY 2015, the Program employed 1,115 staff members consisting of attorneys, financial analysts, paralegals, and support staff. The majority of field offices have 12 or fewer employees, and more than 90 percent of the Program’s employees are located in its field offices.

**Figure 1.2. USTP Staff Levels, FY 2011-2015**



Source: Executive Office for U.S. Trustees

## Budget and Funding

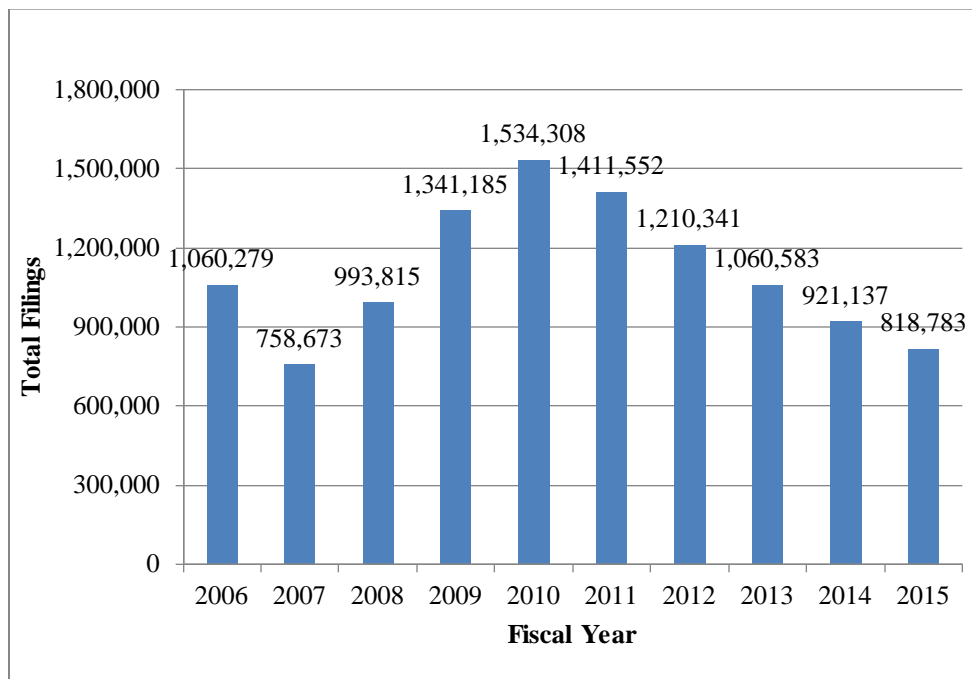
The USTP is funded through appropriations made by Congress. The Program receives a portion of the filing fees paid by consumer and business debtors, quarterly fees based on disbursements from chapter 11 debtors, interest on investments, and other miscellaneous revenue. These funds are placed in the United States Trustee System Fund and are used to offset amounts expended by the USTP pursuant to Congressional appropriations.

The USTP continually examines internal operations to increase cost-efficiency. For example, the USTP has achieved considerable savings by returning underutilized space and reducing space allocations as leases expire, in part by co-locating several Program field offices. The Program also has implemented nationwide a number of work process changes by consolidating at the regional level functions previously conducted in each field office. This innovation takes advantage of economies of scale and yields greater efficiency and effectiveness.

## Caseload

During FY 2015, bankruptcy filings were in the midst of a five-year decline approaching 50 percent, after having doubled in the previous three years. In FY 2015, 818,783 bankruptcy cases were filed in the judicial districts covered by the Program. The rate of decline in filings began to slow in FY 2015, and chapter 11 filings actually increased in the last quarter of the fiscal year.

**Figure 1.3. Total Bankruptcy Filings in USTP Districts, FY 2006-2015**



Source: Administrative Office of the U.S. Courts



A bankruptcy case is a proceeding brought under federal law to discharge or reorganize the financial obligations of an individual or an entity. The federal Bankruptcy Code appears in title 11 of the United States Code. Most bankruptcy cases are filed under chapter 7, 11, or 13.

- Chapter 7 bankruptcy is a liquidation proceeding available to individual consumers and businesses. The assets of a debtor that are not exempt from the reach of creditors are collected and reduced to money, and the proceeds are distributed to creditors in accordance with a priority scheme established by the Bankruptcy Code. A consumer debtor receives a release from debt, except for certain debts that the statute excludes from discharge.
- Chapter 11 provides a procedure by which a business can reorganize debts while continuing to operate. The vast majority of chapter 11 cases are filed by businesses, although individuals also may file under chapter 11. The debtor, often with participation from creditors, creates a plan of reorganization to repay debts, in full or in part.
- Chapter 13 is used by individual consumers to reorganize their financial affairs under a repayment plan that must be completed within three to five years. To be eligible for chapter 13 relief, a consumer must have regular income and may not have more than a specified amount of debt.

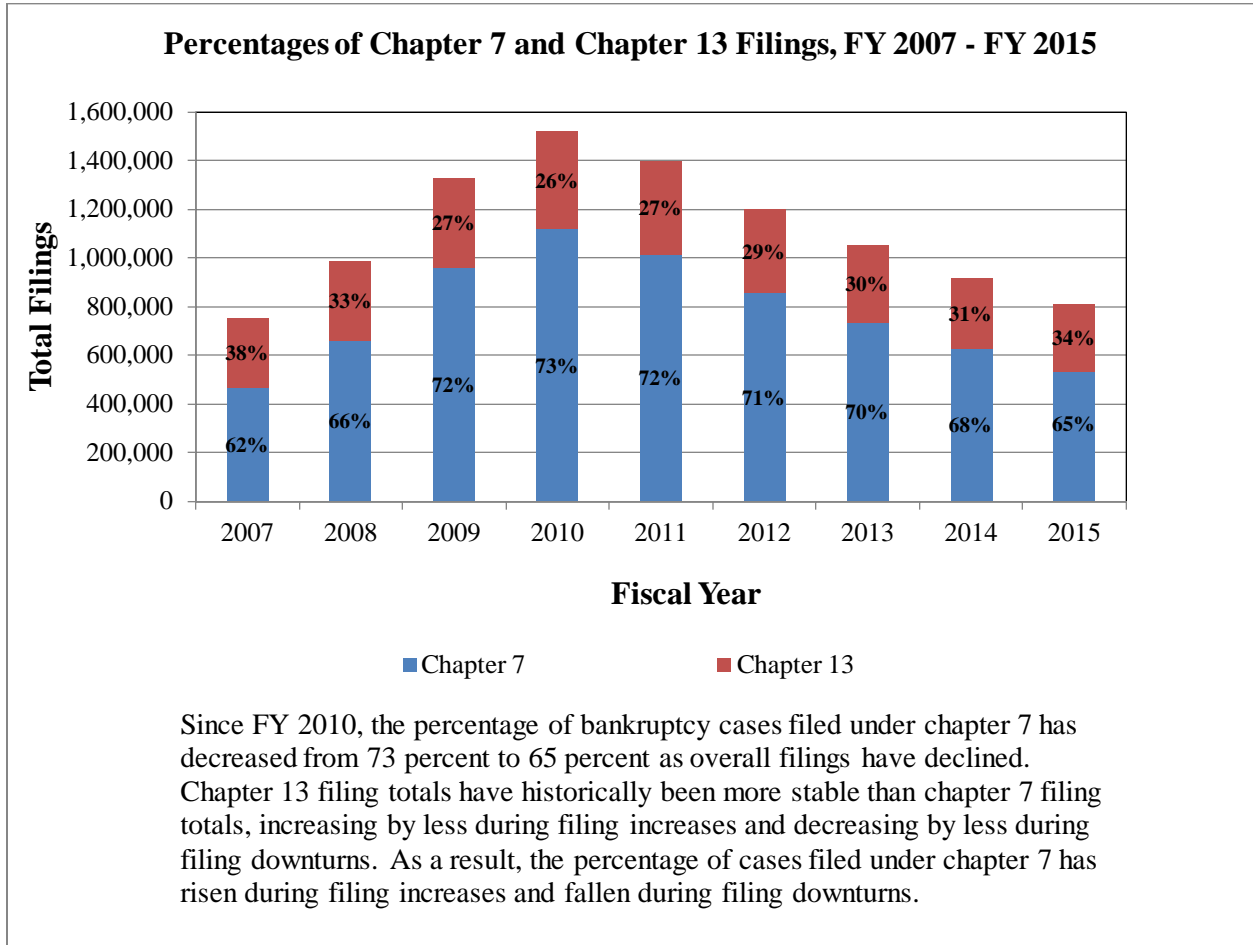
**Figure 1.4. Bankruptcy Filings by Chapter, FY 2015**

<b>Bankruptcy Chapter</b>	<b>Filings in USTP Districts</b>
All Chapters	818,783
Chapter 7	534,480
Chapter 11	6,789
Chapter 13	277,068
Other Chapters*	446

Source: Administrative Office of the U.S. Courts

\*Other cases include those filed under chapters 9 (municipalities), 12 (family farmers), and 15 (cross-border).

## TRENDS



Source: Administrative Office of the U.S. Courts

### Outreach

The USTP engages in significant outreach and training with bankruptcy system stakeholders throughout the year to address Program priorities and issues of mutual concern. As part of this outreach, USTP representatives regularly appear before bar associations and other groups to provide training and information about bankruptcy law and the bankruptcy system.

The Program serves as a consultant to the Judicial Conference of the United States' Advisory Committee on Bankruptcy Rules, providing input on rule and form changes pending consideration by the Conference's Committee on Rules of Practice and Procedure. The Program also works with and assists experts in international insolvency, including serving as the United States' representative to the International Association of Insolvency Regulators. In FY 2015, the Director and the Deputy Director/General Counsel participated on the World Bank Task Force on Insolvency and Creditor/Debtor Regimes.

In addition, the Program has been a member of the President's Financial Fraud Enforcement Task Force since 2009. Program offices also participate in more than 75 local bankruptcy fraud working groups, mortgage fraud working groups, and other specialized law enforcement task forces throughout the country.

## Chapter 2. Civil Enforcement in Consumer Matters

### Combating Fraud and Abuse

A core function of the USTP is to combat bankruptcy fraud and abuse through civil enforcement. The Program combats fraud and abuse committed by debtors by seeking denial of discharge for the concealment of assets and other violations, seeking case conversion or dismissal if a debtor’s case is deemed abusive, and taking other civil enforcement actions. The Program also pursues a variety of remedies—including fee disgorgement, fines, injunctive relief, consumer remediation, and referrals to attorney disciplinary authorities—to address fraud and abuse committed against consumer debtors by non-attorney bankruptcy petition preparers, attorneys, creditors, and others.

During FY 2015, USTP offices reported taking nearly 32,000 formal and informal civil enforcement actions, resulting in more than \$1.1 billion in debts not discharged, fines, and other remedies. USTP attorneys prevailed in 98.5 percent of the actions resolved by judicial decision or consent in the fundamental areas of dismissal for abuse under 11 U.S.C. § 707(b), denial of discharge under 11 U.S.C. § 727, fines and injunctions against bankruptcy petition preparers under 11 U.S.C. § 110, and disgorgements of attorneys’ fees under 11 U.S.C. § 329. Since the USTP began tracking its civil enforcement and related actions in 2003, it has taken more than 686,000 formal and informal actions with a monetary impact of \$16.3 billion.

**Figure 2.1. Civil Enforcement Activity in Consumer Cases, FY 2015**

Type of Activity	Actions	Inquiries	Action Success Rate	Financial Impact (1,000s)
<b>Enforcement Activity Against Debtors</b>				
§ 707(a) Dismissal for Cause	1,760	1,280	97.9%	\$43,522
§ 707(b) Dismissal for Abuse	1,412	9,859	99.1%	\$193,889
§ 727 Denial of Discharge	985	1,704	97.8%	\$840,005
§ 1328(f) Denial of Discharge	41	264	100.0%	\$6,189
§ 1307(c) Dismissal or Conversion	166	80	97.7%	N/A
<b>Consumer Protection Activity</b>				
§ 110 Bankruptcy Petition Preparers	377	557	98.8%	\$1,758
§ 526 Debt Relief Agencies	15	92	100.0%	\$138
§ 329 Attorney Fee Disgorgement	407	1,077	97.8%	\$1,835
Other Attorney Misconduct	88	277	89.7%	\$347
Abusive Conduct by Creditors	190	1,531	98.1%	\$51,623

Source: Executive Office for U.S. Trustees

## Enforcement Actions Against Consumer Debtors

U.S. Trustees combat fraud and abuse committed by consumer debtors, primarily by seeking denial of discharge for the concealment of assets and other violations and by moving for case conversion or dismissal if a debtor's case is deemed abusive.

### *Denial of Discharge under 11 U.S.C. § 727*

The U.S. Trustee may file a complaint to deny in the first instance or to revoke a bankruptcy discharge under 11 U.S.C. § 727 if the debtor engaged in improper conduct such as transferring, concealing, or destroying property to hinder or defraud a creditor or the trustee; knowingly and fraudulently making a false oath; refusing to obey a court order; or failing to keep or preserve financial records. The debtor may voluntarily waive discharge under the same statutory section.

The Roanoke office obtained the denial of a chapter 7 debtor's discharge of \$902,003 in unsecured debt after a two-day trial before the Bankruptcy Court for the Western District of Virginia. The U.S. Trustee objected to discharge based on the debtor's false oaths and fraudulent transfer or concealment of assets that included real property, life insurance policies, annuities, and farming equipment. The court rejected the debtor's arguments that he never owned some of the property and that he mistakenly claimed it on financial statements provided to banks over several years.

### *Dismissal of Case for Abuse under 11 U.S.C. § 707(b)*

The U.S. Trustee may file a motion to dismiss under 11 U.S.C. § 707(b) if, among other things, the debtor's chapter 7 filing is presumed abusive under a statutorily defined means test measuring the debtor's ability to make payments to creditors and the debtor fails to demonstrate special circumstances to rebut the presumption.

In many chapter 7 cases where the presumption of abuse is triggered under the means test, the U.S. Trustee exercises his or her statutory discretion to decline to seek dismissal if the debtor demonstrates that dismissal is not appropriate due to factors such as a recent job loss that justifies an adjustment to the current monthly income calculation. Even if a case is presumed not to be abusive under the means test, the law does not preclude the USTP from taking action when it finds the filing to be abusive under a bad faith or a totality of the circumstances analysis.

Ruling for the Albuquerque office after a trial, the Bankruptcy Court for the District of New Mexico dismissed a debtor's chapter 7 case, preventing the discharge of \$762,382 in unsecured debt. The debtor and his non-filing spouse were life insurance agents who earned more than \$200,000 per year. Their mortgage and housing expenses totaled nearly \$7,000 per month, which the debtor claimed was a necessary business expense to entertain clients. The couple also paid approximately \$5,000 per month for whole life insurance policies used for retirement savings. The court agreed with the U.S. Trustee that these expenses were excessive and found that based on the totality of the circumstances the filing was abusive.

## Consumer Protection Activity

The USTP plays an active part in the Justice Department's efforts to protect Americans from financial fraud and abuse, including investigating and pursuing fraudulent and abusive conduct by those who seek to take advantage of individuals in financial distress. All of the Program's field offices play a role in policing compliance with the Bankruptcy Code and Bankruptcy Rules, analyzing information and coordinating action across multiple districts when appropriate.

### *Enforcement Against Mortgage Servicers*

A primary focus of the USTP's consumer protection activity has been the enforcement of the Bankruptcy Code and Rules against mortgage servicers that inflate their claims or otherwise fail to comply with bankruptcy requirements of accuracy, disclosure, and notice to their customers in bankruptcy. The Program's successful efforts to protect consumers in bankruptcy from these abusive practices continued in FY 2015, resulting in more than \$130 million in relief to homeowners through settlements with major national creditors JPMorgan Chase Bank N.A. (Chase) in March 2015 and Wells Fargo Bank N.A. (Wells Fargo) in November 2015.

The settlement with Chase required the bank to pay more than \$50 million, including cash payments, mortgage loan credits, and loan forgiveness to more than 25,000 homeowners, as well as support of consumer financial education. Chase acknowledged that it filed in bankruptcy courts around the country more than 50,000 payment change notices that were improperly signed by persons who had not reviewed the accuracy of the notices. Chase also acknowledged that it failed to file timely, accurate notices of mortgage payment changes and escrow statements. In addition to the monetary compensation, the settlement required Chase to change internal operations and to submit to oversight by an independent reviewer who will file public reports on the bank's compliance.

Negotiations conducted with Wells Fargo in FY 2015 culminated in a national settlement requiring the bank to pay \$81.6 million in remediation for its repeated failure to provide homeowners with legally mandated notices. Wells Fargo acknowledged that it failed to timely file more than 100,000 payment change notices and failed to timely perform more than 18,000 escrow analyses in cases involving nearly 68,000 accounts of homeowners in bankruptcy between December 1, 2011, and March 31, 2015. The settlement also required Wells Fargo to change internal procedures and submit to oversight by an independent reviewer.

The USTP also continued its close oversight of the mortgage servicers that entered into the historic National Mortgage Settlement (NMS) in 2012. The USTP was a major participant in that \$25 billion settlement reached by the federal government, 49 state attorneys general, and the nation's largest mortgage servicers to address mortgage servicing, foreclosure, and bankruptcy abuses. In addition to providing financial relief to homeowners, the NMS required the servicers to adhere to a uniform and comprehensive set of mortgage servicing standards, including provisions specific to bankruptcy, and to subject themselves to three and a half years of compliance review by an independent monitor. The Program served as the federal co-chair of the NMS Monitoring Committee and, in that capacity, worked with federal and state agencies to ensure that the settling servicers satisfied their obligations under the settlement. The committee

also engaged in oversight of the independent monitor established by the NMS, who verified compliance by the settling servicers.

The USTP reviewed more than 10,000 filings in chapter 13 bankruptcy cases to ensure that servicers subject to the NMS were complying with their bankruptcy-related obligations. The USTP identified deficiencies in compliance and brought these issues to the attention of the monitor, who independently confirmed them. The USTP continued to work with the monitor to ensure that the servicers undertook corrective actions. In FY 2015, the monitor issued reports detailing the corrective actions taken by the servicers to ensure ongoing compliance with the NMS.

The USTP's success as an enforcement agency is demonstrated not only by the settlements achieved to date, but by the fact that financial and other creditor communities now accept the Program's role as regulator and enforcer in the consumer arena. As a result of the Program's continuing enforcement, some financial institutions have come forward to admit operational flaws detected in their own internal compliance reviews. The USTP remains prepared to litigate, but this positive trend suggests the possibility of future consensual resolution of creditor violations.

#### *Enforcement Against Unsecured Creditors*

The USTP polices the conduct of unsecured creditors to ensure against improper disclosure of consumers' personal information, unlawful attempts to collect on debt discharged in bankruptcy, and other conduct prohibited by the Bankruptcy Code and Rules.

FY 2015 included the successful conclusion of a national settlement between the USTP and Citigroup Inc. (Citi) to protect the personal information of nearly 150,000 consumers in 85 jurisdictions. Under the settlement reached in FY 2013, Citi had agreed to redact proofs of claim filed in bankruptcy cases nationwide in which the personal information of consumer debtors and third parties, including Social Security numbers and birthdates, had not been properly redacted by Citi as required by the Bankruptcy Rules. Citi also agreed to notify all affected consumers and offer them one year of free credit monitoring and to change its internal practices so the redaction error would not recur. The settlement called for the appointment of a privacy expert to serve as independent auditor to review and certify the accuracy of the remediation process. The USTP worked with courts across the country and with Citi to ensure the filings were corrected. The independent auditor filed his final report in FY 2015, determining that Citi had properly redacted the information as required under the settlement.

The USTP also continued examining the conduct of banks that sell a large volume of consumer debt and those that buy that debt. For example, the Program served several banks with discovery orders to determine if their debt selling activities improperly compromise the bankruptcy "fresh start" by failing to update credit reports to reflect the discharge of sold debt. As a result of the USTP's review, several banks announced changes to their credit reporting procedures. These changes may help prevent claims buyers from pursuing discharged debt and may make credit reports more complete so that other credit report users, such as landlords and prospective employers, do not mischaracterize discharged debt as a current financial burden.

### *Enforcement Against Attorneys under 11 U.S.C. § 329 and Other Provisions*

U.S. Trustees take action against attorneys who engage in unethical conduct or provide substandard representation. For example, the U.S. Trustee may seek a court order requiring an attorney to disgorge fees under 11 U.S.C. § 329 or imposing other appropriate sanctions, or may refer a matter to a state court disciplinary board or other regulatory body. U.S. Trustees also enforce 11 U.S.C. § 526, which governs debt relief agencies. Among other things, that provision precludes attorneys and other debt relief agencies from failing to provide promised services and making or counseling the debtors to make untrue or misleading statements in documents filed in a bankruptcy case.

In late FY 2015, the USTP launched an initiative to address the problem of unscrupulous or poorly performing consumer attorneys. Consumers in financial distress are particularly vulnerable. The USTP has significant experience in dealing with those who seek to prey on that vulnerability, and began reviewing its options for addressing the problem on a national basis.

After the Chicago office obtained an immediate interim suspension that prevented an attorney from appearing before the bankruptcy court, the attorney was required to return nearly \$18,300 in client fees and was suspended from bankruptcy practice for one year. The attorney missed more than 30 hearings in her clients' bankruptcy cases, filed documents riddled with errors, and appeared in court in an impaired condition. The Bankruptcy Court for the Northern District of Illinois entered the agreed order.

### *Enforcement Against Bankruptcy Petition Preparers under 11 U.S.C. § 110*

U.S. Trustees file actions against bankruptcy petition preparers who violate the consumer protection provisions of 11 U.S.C. § 110. A bankruptcy petition preparer is a non-attorney who prepares debtors' bankruptcy documents for a fee. Section 110 requires bankruptcy petition preparers to disclose in court filings their identities and the fees they receive, and bars them from activities such as offering legal advice, using the word "legal" or similar terms in advertisements, charging excessive fees, collecting clients' court filing fees, or engaging in unfair, deceptive, or fraudulent conduct. Nonetheless, some petition preparers charge excessive fees, fail to make required disclosures, and engage in other prohibited conduct, including schemes to defraud consumers who seek home loan modification or face foreclosure or eviction.

The coordinated efforts of the San Diego and San Francisco offices resulted in injunctions and orders to disgorge \$71,000 in fees against a company and two individuals who prepared bankruptcy petitions in the Northern and Southern Districts of California. Pursuant to stipulations with the U.S. Trustees who oversee case filings in those districts, the Bankruptcy Courts for the Northern and Southern Districts of California entered judgments enjoining the company and individuals from acting as bankruptcy petition preparers and debt relief agencies in all jurisdictions throughout the United States. The U.S. Trustees alleged that the petition preparers promised loan modification assistance but instead placed clients in bankruptcy to avoid foreclosures, told debtors not to appear at their mandatory section 341 meetings of creditors, provided legal advice, and failed to comply with statutory requirements to disclose their roles as petition preparers.



## Debtor Audits

The Program is authorized by law to contract with independent firms to perform audits of consumer chapter 7 and chapter 13 cases. The audits are designed to provide baseline data to gauge the magnitude of fraud, abuse, and error in the bankruptcy system; to assist the Program in identifying cases of fraud, abuse, and error; and to enhance deterrence. More information may be found in [\*Public Report: Debtor Audits by the United States Trustee Program, Fiscal Year 2015\*](#), posted on the Program's Internet site.

Based on information discovered during an independent audit overseen by the South Bend office, the Bankruptcy Court for the Northern District of Indiana denied the chapter 7 discharge of a debtor who failed to disclose his interest in real property. Among other things, the debtor audit uncovered records showing that shortly before filing bankruptcy the debtor purchased real property with his wife. The U.S. Trustee objected to discharge based on concealment and false oaths. Before trial, the debtor agreed to denial of his discharge.

## Chapter 3. Criminal Enforcement

### Criminal Referrals

Criminal enforcement is another key component of the Program's efforts to uphold the integrity of the bankruptcy system. The Program has a statutory duty to refer matters to the U.S. Attorneys' offices for investigation and prosecution that relate to "the occurrence of any action which may constitute a crime." The statute also requires each U.S. Trustee to assist the U.S. Attorney in carrying out prosecutions. Assistance may include providing technical bankruptcy-related information during the investigation, providing expert or fact testimony at criminal trials, or serving as a Special Assistant U.S. Attorney to prosecute the case.

In FY 2015, the Program made 2,131 bankruptcy and bankruptcy-related criminal referrals. One referral often contains more than one allegation. The five most common allegations in referrals made during FY 2015 involved tax fraud, false oath or statement, concealment of assets, bankruptcy fraud scheme, and identity theft or use of false/multiple Social Security numbers.

Program employees conduct extensive training for federal, state, and local law enforcement personnel; USTP staff; and private bankruptcy trustees. During FY 2015, the USTP presented more than 100 bankruptcy and bankruptcy-related fraud training programs that reached approximately 3,700 federal, state, and local law enforcement personnel; Program employees; bankruptcy trustees; and members of the bar and other professional associations throughout the country. Notable for FY 2015 was the launch of a series of bankruptcy fraud training conference calls for FBI agents and analysts created in partnership with the Financial Institution Fraud Unit of the FBI's Criminal Investigation Division.

The USTP submits an annual report to Congress detailing the number and types of its criminal referrals. More information may be found in [\*Criminal Referrals by the United States Trustee Program, Fiscal Year 2015\*](#), posted on the Program's Internet site.

### USTP Participation in Cases

The following criminal prosecutions demonstrate the USTP's commitment to addressing criminal violations by debtors and by those who seek to exploit debtors.

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

A bankruptcy petition preparer was convicted in the District of Puerto Rico on 31 counts of bankruptcy fraud, falsification of records, wire fraud, aggravated identity theft, and contempt of court. He was later sentenced to more than 11 years in prison and ordered to pay restitution of \$513,200. The petition preparer assisted hundreds of individuals with the filing of fraudulent chapter 13 bankruptcy petitions. He solicited individuals who were incarcerated or facing incarceration for failure to pay child support, promising that in exchange for a fee they would be released from prison or avoid imprisonment. He then filed or caused to be filed chapter 13 bankruptcy petitions, which temporarily halted the child support collection actions. The petition preparer also indicated to prospective clients that his fee included legal representation, even though he was not a lawyer. When the fraudulent bankruptcy petitions were ultimately dismissed by the bankruptcy court, the petition preparer ceased contact with his clients. The San Juan office referred the criminal matter and assisted with the prosecution, after obtaining an injunction in the bankruptcy court and sanctions of \$70,700.

A chapter 7 debtor was sentenced in the Northern District of Illinois to six years and three months in prison and ordered to pay \$100,250 in restitution after pleading guilty to bankruptcy fraud, bank fraud, mail fraud, access device fraud, and identity theft. The debtor concealed his ownership interests in three corporations and testified falsely during his bankruptcy case. He also used a terminally ill relative's identity to incur credit card debt, deposited a check from an account with insufficient funds, and withdrew money before the check was returned. The Chicago office referred the criminal matter and, in the debtor's bankruptcy case, obtained the debtor's waiver of his chapter 7 discharge of \$567,095 in unsecured debt.

The Assistant U.S. Trustee for the San Juan office received a Cooperative Achievement Award from the U.S. Department of Health and Human Services (HHS) for her work as a member of the Multi-Program Grant federal investigative team that included representatives from the U.S. Attorney's Office, the FBI, the HHS Office of the Inspector General, and the Departments of Education and Agriculture. The award recognized the team for its successful investigation and prosecution of the former president of a chapter 11 debtor, who pleaded guilty to theft of government property in connection with the receipt of Head Start funding and other federal assistance.

## Chapter 4. Litigation in Chapter 11 Reorganizations

### Duties in Chapter 11 Cases

The USTP has important statutory obligations in business reorganization cases to ensure accountability by the debtor's management so the interests of all stakeholders are protected. The USTP's top priorities in chapter 11 include reviewing and, where appropriate, objecting to requests to retain professionals such as attorneys, accountants, and turnaround specialists and to pay them from the bankruptcy estate; seeking to appoint chapter 11 trustees and examiners when necessary; fulfilling statutory obligations by appointing unsecured creditors' committees and other official committees; enforcing statutory limits on bonuses requested for debtor company executives; and ensuring that management satisfies basic operating requirements designed to protect creditor recoveries.

**Figure 4.1. Chapter 11 Case Administration and Oversight Activity, FY 2015**

Type of Activity	Actions	Inquiries	Action Success Rate
§ 1112(b) Conversion or Dismissal	2,691	1,559	98.1%
§ 1125 Disclosure Statements	623	409	99.2%
§ 1129 Plan Confirmation	349	257	95.3%
§ 1104 Appointment of Trustee or Examiner	76	22	84.3%
§ 330 Professional Fee Requests*	466	898	92.7%
§ 503(c) Key Employee Retention Plans	38	30	68.8%

Source: Executive Office for U.S. Trustees

\*Professional fee requests under 11 U.S.C. § 330 arise primarily in chapter 11 cases, but also in cases filed under other chapters.

Aggregate litigation success rates for USTP enforcement actions in chapter 11 have remained between 96 percent and 98 percent since FY 2007. These consistently high litigation success rates indicate that the USTP is using discretion and bringing the most meritorious actions, regardless of the number of chapter 11 filings. The rates in chapter 11 mirrored the aggregate success rates for all USTP actions, which also remained between 96 percent and 98 percent during this time.

### Fees of Attorneys and Other Professionals

#### *Objections to Employment and Compensation*

U.S. Trustees monitor and, when appropriate, object to the employment and compensation of chapter 11 case professionals such as attorneys, accountants, turnaround specialists, and others who are paid from bankruptcy estate funds. U.S. Trustees review these professionals' applications for employment and compensation to ensure compliance with the Bankruptcy Code.

In FY 2015, the U.S. Supreme Court ruled in *Baker Botts v. ASARCO, LLP*, 576 U.S. \_\_\_, 135 S. Ct. 2158 (2015), that attorneys' fees for defending objections to applications for compensation (sometimes called "defense fees" or "fees on fees") are prohibited because 11 U.S.C. § 330 does not expressly overrule the "American Rule" that parties pay their own legal fees. Section 330 permits professionals to be paid only for services rendered to a client, and defending a fee application from objection is not a client service but is instead work for the professional's benefit. After the *ASARCO* ruling, the Wilmington office successfully objected to several professional retention applications that would have allowed the professionals to receive defense fees—an outcome directly at odds with *ASARCO*. The lead case to test the issue was *Boomerang Tube Inc.*, where a firm sought to enter into agreements with an official committee under 11 U.S.C. § 328 for the payment of defense fees. The U.S. Trustee ultimately prevailed on these objections in cases before five different judges in the Bankruptcy Court for the District of Delaware.

After the Columbus office objected to the fee application filed by counsel for a title agency in chapter 11, the Bankruptcy Court for the Southern District of Ohio reduced the law firm's fees by \$1.3 million—more than 50 percent of the total amount requested. The U.S. Trustee objected to the application, in part, because the law firm violated bankruptcy conflict rules when it filed pleadings on behalf of certain officers of the company in state court.

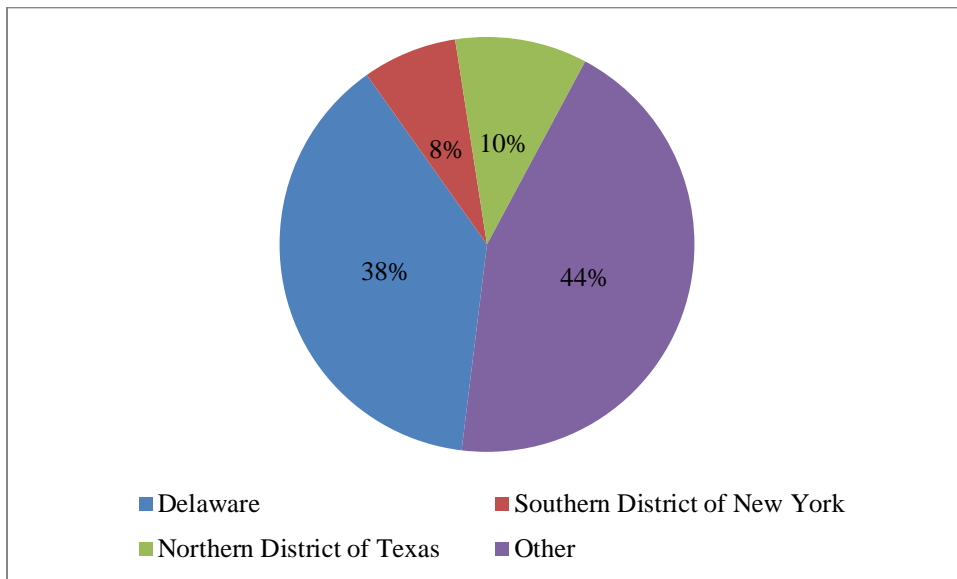
#### *Large Case Fee Guidelines for Attorneys*

The USTP promulgated new guidelines in late 2013 modernizing its review of attorneys' fees requested in the largest chapter 11 cases. The guidelines were designed to reflect significant changes in the legal industry and the complexity of business bankruptcy reorganization cases, as well as to enhance transparency and public confidence in the integrity and soundness of the bankruptcy compensation process. Since the guidelines became effective, attorneys have by and large agreed to abide by them, large firms have improved internal billing practices and processes, and firms are continuing pre-petition discounts and taking other measures to ensure comparability between bankruptcy and non-bankruptcy billing.

In FY 2015, the General Accountability Office (GAO) issued a report reviewing the USTP chapter 11 large case fee guidelines. The report, entitled "Stakeholders Have Mixed Views on Attorneys' Fee Guidelines and Venue Selection for Large Chapter 11 Cases," is available at [www.gao.gov/products/GAO-15-839](http://www.gao.gov/products/GAO-15-839). Notably, the GAO made no recommendations for changes in the content or implementation of the guidelines.

Also in FY 2015, the USTP's Associate General Counsel for Chapter 11 Practice received an Attorney General's Award for Outstanding Contributions by a New Employee for her exceptional service in developing and successfully implementing the new fee guidelines after undertaking extensive study of professional compensation schemes both in and out of bankruptcy and engaging in extensive stakeholder review. These efforts resulted in an approach to professional compensation that is grounded in modern bankruptcy practice and that supports the USTP's mission by enhancing public confidence in the integrity of the bankruptcy compensation process.

**Figure 4.2. FY 2015 Large Case Fee Guidelines Cases by District**



Source: Executive Office for U.S. Trustees

### Executive Bonuses

In the 2005 bankruptcy reform law, Congress sought to curtail the practice of chapter 11 debtors’ executives awarding themselves lavish bonuses during the bankruptcy case to the detriment of creditors and employees. The USTP reviews requests for executive bonuses and other compensation for compliance with 11 U.S.C. § 503(c) and is often the only participant in the bankruptcy case to pursue enforcement of that section. In many cases, the U.S. Trustee’s informal objections have resulted in substantial voluntary changes to the debtor’s proposed executive compensation programs in order to comply with the statute. Other cases have required formal court action.

In one case, the Wilmington office’s objection resulted in the denial of a chapter 11 debtor’s plan to pay bonuses totaling as much as \$2.9 million to seven management-level employees. The U.S. Trustee successfully argued in the Bankruptcy Court for the District of Delaware that the bonuses were impermissibly designed to compensate management merely for staying with the debtor during the bankruptcy case rather than to provide bona fide incentives for superior accomplishment for the benefit of the bankruptcy estates, as required by the statute. The debtor revised the plan to reduce the proposed bonus amounts by almost two-thirds and to impose more stringent standards for the executives to earn them. Ultimately, because the more stringent standards were not met, the executives did not receive the bonuses.

## Independent Trustees and Examiners

The Program's responsibilities in business reorganization cases also include the appointment of trustees when there are grounds to suspect that current management participated in gross mismanagement, fraud, dishonesty, or other improper activity. In addition, the U.S. Trustee seeks the appointment of examiners when independent investigations are needed.

The Tyler office obtained the appointment of a trustee in the chapter 11 case of a solar panel manufacturer. Before the bankruptcy case was filed in the Eastern District of Texas, the state of Texas accused the manufacturer of purchasing defective solar panels from a foreign country and relabeling them as made in the United States so they could be sold to U.S. agencies, the military, and other purchasers under the Buy American Act. The bankruptcy trustee successfully moved to convert the case to a chapter 7 liquidation, arguing that reorganization in chapter 11 was impossible given that the debtor had stopped operating, had incurred unpaid debts after filing bankruptcy, and faced the prospect of owing millions of dollars in damages to the state.

## Other Chapter 11 Enforcement

### *Objections to Sealing*

Section 107 of the Bankruptcy Code and Bankruptcy Rule 9037 set a high bar for the bankruptcy court to deviate from the presumption in favor of open court records and proceedings. U.S. Trustees object to attempts to seal records that should be accessible to all parties in a bankruptcy case, although a temporary seal might sometimes be appropriate so that parties, and the court if necessary, can resolve objections to the public disclosure of privileged or other protected information.

Sustaining the Manchester office's objection, the Bankruptcy Court for the District of New Hampshire refused to seal a declaration by a chapter 11 debtor's chief operating officer that detailed the causes of the bankruptcy filing. The debtor, the unsecured creditors' committee, and a major creditor all argued that unsealing the document would unravel a proposed settlement with the creditor. The U.S. Trustee successfully countered the argument, noting that public scrutiny of a debtor's conduct and transparency in the bankruptcy process was essential to fostering confidence in the fundamental fairness of the bankruptcy system.

### *Motions to Convert or Dismiss*

When there appears to be little likelihood of a successful reorganization or the debtor fails to satisfy its fiduciary obligations or comply with the law—for example, by dissipating the assets of the bankruptcy estate or by failing to file required monthly financial operating reports—U.S. Trustees seek to have the chapter 11 case converted to a chapter 7 liquidation case or dismissed under 11 U.S.C. § 1112(b). The USTP moves to dismiss or convert about one-third of all chapter 11 cases.

The Shreveport office obtained the conversion of an oil and gas development company's bankruptcy case from chapter 11 to chapter 7 because the debtor did not obtain insurance coverage on its assets. The Bankruptcy Court for the Western District of Louisiana converted the case after the U.S. Trustee successfully argued that the debtor's offshore platform in the Gulf of Mexico was at increased risk as the hurricane season approached.

#### *Objections to Disclosure Statements and to Plan Confirmation*

Chapter 11 debtors, and in some circumstances other parties, may propose a plan of reorganization. Generally, creditors and interest holders whose rights are altered by the plan may vote to accept or reject the plan. Under 11 U.S.C. § 1125, before soliciting acceptances of the plan, the proponent must obtain court approval of a disclosure statement that provides adequate information about the debtor and the proposed plan of reorganization to allow creditors and interest holders to make an informed decision on whether to vote in favor of the plan.

The plan of reorganization must also be confirmed (approved) by the court. To obtain confirmation, the plan and the proponent must comply with the requirements of 11 U.S.C. § 1129.

U.S. Trustees object to the approval of disclosure statements that do not provide adequate information or do not otherwise meet statutory requirements. They also object to confirmation of proposed reorganization plans that do not meet statutory requirements. The USTP will raise these objections even when the debtor and select constituencies agree upon a course of action, if that course of action is forbidden by the Bankruptcy Code.



## Chapter 5. Appellate Activities

### Bankruptcy-Related Appeals

One of the USTP's most important functions is to develop case law by participating in appeals of bankruptcy-related legal matters to help clarify the law, produce consistency within the bankruptcy system, and preserve the integrity of the bankruptcy process. The USTP identifies important emerging issues, develops uniform legal positions, and advocates them as a party and as *amicus curiae* (friend of the court). The USTP has handled an increasing number of appeals in recent years. During FY 2015, the Program participated in 96 appeals and received written decisions in 55 appeals, winning 51 of them.

The Program's appellate practice benefits from a nationwide team of attorneys in the EOUST and the Program's field offices who brief and argue or help litigate at every appellate level, including bankruptcy appellate panels, district courts, courts of appeals, and the U.S. Supreme Court. The USTP also assists the Department of Justice's Appellate Staff of the Civil Division and the Office of the Solicitor General in other bankruptcy-related matters in which the USTP is not directly involved, including appeals before the U.S. Supreme Court.

### U.S. Supreme Court Cases

The U.S. Supreme Court heard several bankruptcy cases in FY 2015, including three in which the United States participated as *amicus curiae*. The USTP provided assistance to the Solicitor General in analyzing these cases and, in two, was listed among the government's counsel in the briefs.

Among the issues the Court addressed were whether bankruptcy attorneys may receive payment from the estate for time spent defending objections to their fee applications. In *Baker Botts LLP v. ASARCO LLC*, 576 U.S. \_\_\_, 135 S. Ct. 2158 (2015), the Supreme Court affirmed the Court of Appeals for the Fifth Circuit's *per se* prohibition of those fees.

In *Bullard v. Blue Hills Bank*, 135 S. Ct. 1686 (2015), the Court provided needed guidance regarding the standards for determining the finality of bankruptcy court orders. In that case, the Court ruled that an order denying confirmation of a debtor's proposed chapter 13 plan is not final because it did not alter the status quo and fix the rights and obligations of the parties.

In *Wellness International Network, Ltd. v. Sharif*, 135 S. Ct. 1932 (2015), the Court agreed with the Program's position and held that Article III of the U.S. Constitution is not violated when the parties knowingly and voluntarily consent to a bankruptcy court's adjudication of certain claims. The Court further held that the necessary consent may be implied, but, whether express or implied, it must be knowing and voluntary.

### Other Appellate Rulings

Most appeals in which the USTP participates are before bankruptcy appellate panels, district courts, and courts of appeals. In FY 2015, a number of these appeals involved the

USTP's efforts to curb misconduct by bankruptcy professionals who violated their obligations to their clients, the court, and the bankruptcy estate.

In the Fifth Circuit, in *Smith v. Robbins (In re IFS Fin. Corp.)*, 803 F.3d 195 (5th Cir. 2015), the USTP successfully defended the removal of a chapter 7 trustee who tried to overcharge a bankruptcy estate by billing for personal expenses not necessary to the administration of the estate. Before the Bankruptcy Appellate Panel of the Eighth Circuit, in *Needler v. Casamatta (In re Miller Auto. Grp. Inc.)*, 536 B.R. 828 (B.A.P. 8th Cir. 2015), the Program prevailed in its defense of an order sanctioning a debtor's attorney who not only failed to provide a benefit to the debtor, but also took actions that were detrimental and caused the debtor to incur unnecessary fees. The USTP also successfully defended sanctions against a debtor's attorney who told his client to lie about her assets and her financial transactions in *Bisges v. Gargula (In re Clink)*, 770 F.3d 719 (8th Cir. 2014), and sanctions imposed upon an attorney who improperly filed court documents while suspended and then lied about it in court in *Septowski v. Neary (In re Jones)*, No. 14-971, slip op. (N.D. Tex. June 17, 2015).

## Chapter 6. Trustee Oversight

### Private Trustees

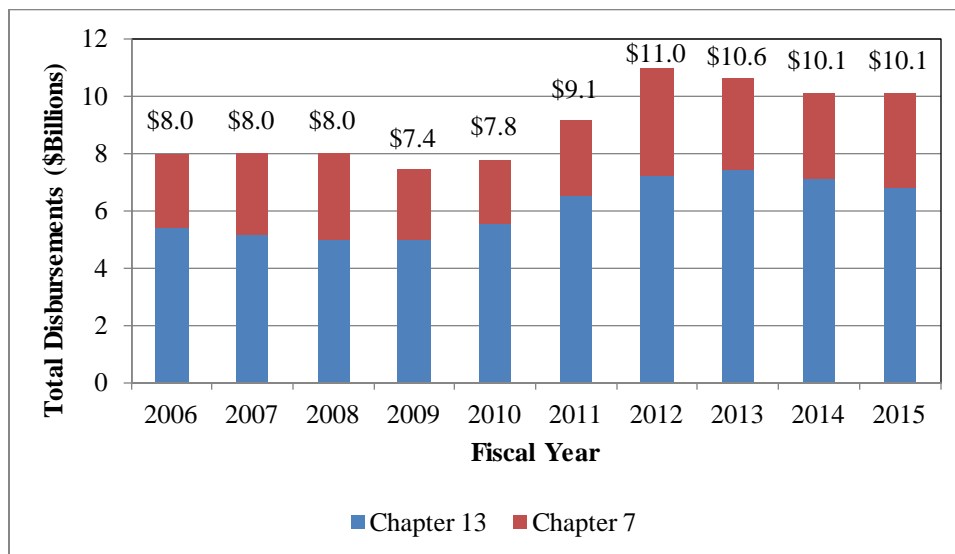
The USTP appoints and supervises private trustees, who are not government employees, to administer bankruptcy estates and distribute payments to creditors in cases filed under chapters 7, 12, and 13. Chapter 7 trustees collect the debtor's assets that are not exempt from payment to creditors, liquidate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

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

### Trustee Distributions

In FY 2015, U.S. Trustees oversaw the activities of approximately 1,400 private trustees appointed by them to handle the day-to-day activities of around 1.8 million ongoing cases. These trustees distributed more than \$10 billion from the assets of estates.

**Figure 6.1. Total Disbursements in Chapter 7 and 13 Cases, FY 2006-2015**



Source: Executive Office for U.S. Trustees

[Chapter 7](#), [chapter 12](#), and [chapter 13](#) distribution statistics are available on the Program's Internet site.

In addition, [raw data](#) on chapter 7 trustee distributions are posted on the USTP's Internet site and on [www.data.gov](http://www.data.gov).

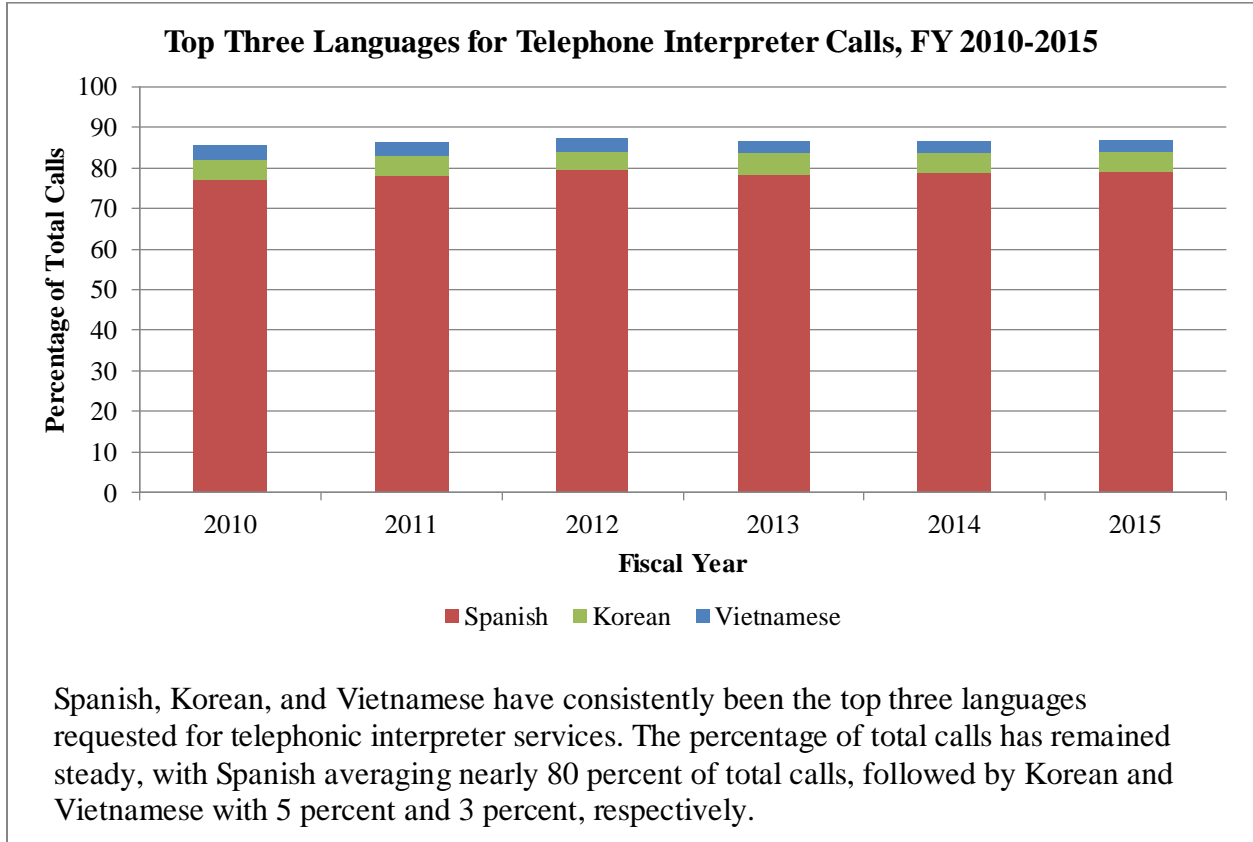
#### Language Assistance for Individuals with Limited English Proficiency

Debtors are required to attend the “first meeting of creditors” or “section 341 meeting,” where the trustee, U.S. Trustee, and creditors may question them under oath about their financial affairs. For individuals with limited English proficiency, the Program offers free telephonic interpreter services at the section 341 meetings.

In FY 2015, more than 18,000 calls were made for interpreter services. The top five cities for use of interpreter services were Los Angeles, California; Newark, New Jersey; Riverside, California; Chicago, Illinois; and New York City, New York.

The USTP hosts an “[interactive dashboard](#)” on its Internet site, which provides summary interpreter service tabulations by state, city, and language. Further, raw data files on the use of telephonic interpreters are posted at that same location and are also available at [www.data.gov](http://www.data.gov).

## TRENDS



Source: Executive Office for U.S. Trustees

### Enhanced Security in Section 341 Meeting Rooms

To maximize accessibility and minimize the time and costs of travel for debtors, creditors, and professionals, the USTP maintains more than 400 sites across the country where section 341 meetings of creditors are held. These meetings are required by the Bankruptcy Code and take place in every bankruptcy case. Whenever possible, these meeting sites are in federal courthouses or other secured federal space. Often, however, section 341 meetings are located in non-federal facilities, including commercial space leased by the USTP through the General Services Administration, rented space such as hotel conference rooms, and no-cost local facilities such as public libraries.

Drawing on information provided by judges, private trustees, and the USTP's own internal assessments, the Program has developed a plan for improving security at section 341 meetings. Among other things, between FY 2015 and FY 2016, the Program allocated \$1 million from its base funding to provide armed guards, contracted through the Department of Homeland Security's Federal Protective Service, at some of its less secure meeting sites and worked with the Administrative Office of the U.S. Courts to identify opportunities to share or acquire space in courthouses or other secure federal facilities. The USTP also has worked closely with the United

States Marshals Service to clarify what assistance it can provide when security concerns are present.

## Chapter 7. Credit Counseling and Debtor Education

### Approval of Agencies and Providers

The U.S. Trustee approves eligible agencies and providers who meet statutory qualifications to offer pre-bankruptcy credit counseling and post-bankruptcy education services to debtors. Consumer debtors must receive credit counseling before filing for bankruptcy relief and personal financial management instruction before receiving a discharge of debts. These statutory requirements are intended to ensure that individuals make informed financial decisions before filing for bankruptcy relief, and to provide debtors the tools to avoid future financial catastrophe when they exit bankruptcy.

An entity seeking approval as a credit counseling agency or debtor education provider must apply to the USTP for approval, pursuant to criteria set forth in the Bankruptcy Code. [Application information and materials](#) are posted on the Program's Internet site.

At the end of FY 2015, there were 133 credit counseling agencies and 208 debtor education providers approved by the USTP.

### Fees and Delivery of Services

While the Bankruptcy Code permits credit counseling agencies and debtor education providers to charge a reasonable fee for services, it also requires them to provide services without regard to the consumer's ability to pay. The maximum presumptively reasonable fee an agency or provider may charge per person is \$50. Agencies and providers must offer a full or partial waiver upon a debtor's showing of inability to pay. More than 50 chapter 13 trustees provide free debtor education to the chapter 13 debtors whose cases they administer.

**Figure 7.1. Median Fee for Services, of Agencies and Providers That Charge a Fee, FY 2015**

Type of Service	Cost for Individuals	Cost for Couples
Credit Counseling	\$50	\$50
Debtor Education	\$40	\$50

Source: Executive Office for U.S. Trustees

The Bankruptcy Code allows approved credit counseling agencies and debtor education providers to offer services in person or via the Internet or telephone.

**Figure 7.2. Delivery Method for Services Received, FY 2015**

<b>Type of Service</b>	<b>In-Person</b>	<b>Internet or Internet/ Telephone</b>	<b>Telephone</b>
Credit Counseling	1%	88%	11%
Debtor Education	4%	88%	8%

Source: Executive Office for U.S. Trustees

### Complaints, Quality of Service Reviews

In addition to the annual application screening process, the Program investigates complaints against approved credit counseling agencies and providers, and conducts quality of service reviews. Quality of service reviews allow the Program to corroborate the information submitted in the application for approval; observe credit counseling and debtor education sessions; and evaluate the operations of the credit counseling agency or debtor education provider to ensure the safekeeping of client funds, confirm the agency's operation as a nonprofit entity, and protect consumers. In FY 2015, the Program undertook 16 quality of service reviews.



# U.S. TRUSTEE PROGRAM NATIONWIDE OFFICE LOCATOR

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