

“A New Approach to  
Accountability in the Bankruptcy System”

*Written by:* Lawrence Friedman  
Director, Executive Office for United States Trustees

It is a great honor to serve as Director of the Executive Office for U.S. Trustees, and a particularly exciting time to be in Washington, D.C.

When I was appointed, I received a mandate from Attorney General Ashcroft to preserve the integrity of the bankruptcy process by ferreting out abuse within the system. In this regard, the number one initiative of the U.S. Trustee Program under my leadership will be to carry out an effective program of civil enforcement.

The Civil Enforcement Initiative represents on a national scale the same kind of change I worked to achieve, on a smaller scale, as a private trustee in Detroit. By the time I joined the U.S. Trustee Program, I had administered more than 14,000 cases as a Chapter 7 Trustee. When I started out as a trustee, I reviewed my duties under 11 U.S.C. § 704 as well as the duties the debtor was obligated to perform to obtain a discharge. To ensure that debtors were providing the full disclosure that is required under 11 U.S.C. § 521 for a discharge, I started performing my duties in a way they hadn't been performed before in the Eastern District of Michigan. For example, my staff and I looked at the accuracy of schedules by going out to debtors' homes and viewing their property. Many thought the system could not be changed and would be unreceptive to this sort of scrutiny.

But we did change the system, we did raise the bar--and we improved the integrity of the bankruptcy system in our district. As EOUST Director, I want to try to achieve that kind of change on a nationwide basis.

To effect such change requires a concerted effort and a change in the way we do business here in the Program. One of the Administration's primary goals is to make government more accountable to its citizens by streamlining processes and focusing on results-oriented performance standards that ensure uniformity throughout the nation. The Attorney General is personally committed to this goal, and has made it very clear that all component heads will be held accountable for implementing it. That's a responsibility I take to heart.

I have immersed myself in my new job to learn as swiftly as possible what needs to be done to effect such change, and how to do it. I have spoken at length with employees in the Executive Office and the field offices, and with members of the bench and bar. I have quickly learned that the Program is filled with intelligent, enthusiastic, and talented individuals, both at the Executive Office and in our offices around the country, and I am very proud to work with them.

From my prior contacts with the U.S. Trustee's office in Detroit, I was long aware of the increasing work pressures brought about by the high volume of bankruptcy filings. I decided

almost immediately upon taking office that it was impossible to ask Program employees to handle all of the responsibilities they have been asked to handle over the last several years, and still maintain enthusiastic and motivated employees. I recognized that, for our employees to focus on initiatives so as to achieve the results I expect, their energies must be refocused and some of their duties removed.

We are doing this in two ways—first, by refocusing on core issues such as the Civil Enforcement Initiative and, second, by emphasizing outcomes rather than procedures as we carry out our duties. My aim is to reduce extraneous paperwork to free Program staff for more direct and active oversight responsibilities.

For example, in the area of trustee oversight, effective on July 1, 2002, the Program will no longer require Chapter 7 trustees to file interim reports every six months. Instead, with certain exceptions, reports will be filed annually. This action will open up a significant number of work days for both trustee and Program staff, and will drastically reduce the paper that trustees generate and our offices review.

Just as we will develop more effective methods for monitoring trustees, under my leadership the Program will continue to monitor very closely the actions of professionals who seek employment and compensation in bankruptcy cases. We will work to develop a national standard of practice for professionals, taking into account the legitimate concerns of all parties, but recognizing that the requirements of the Bankruptcy Code must prevail.

At the same time, we are moving forward with very exciting improvements in our information technology capabilities and reporting systems that will capture much more accurately and transparently what happens in the bankruptcy system. All parties who are subject to our oversight—private trustees, bankruptcy practitioners, other professionals—will be held closely accountable for their actions. It is crucial to the integrity of the system that information be provided accurately and honestly. My accountability to the Attorney General requires no less.

No discussion of current issues facing the Program would be complete without mention of the pending bankruptcy reform legislation. Over the past two years the Program has worked very hard to prepare for implementation of the bankruptcy reform bill, should it become law. I am confident that if the bill passes we have the tools in place to carry out the new responsibilities entrusted to us. I am also confident, however, that if the legislation does not pass we will be able to demonstrate our responsiveness to the concerns raised by Congress. For example, all of our offices are reviewing Chapter 7 petitions for evidence of fraud and abuse. Our Brooklyn office started doing this last October, under the direction of Assistant U.S. Trustee Diana Adams, who created a very simple model for case review. She chose those that, among other factors, had less than \$10,000 in assets and more than \$100,000 in unsecured credit card debt. From this very simple review the Brooklyn office identified over 120 “no-asset” cases that warranted further investigation.

If there is one theme that runs through these developments, it is the theme of full disclosure and accountability—by debtors who truthfully list their assets, liabilities, and other financial information; by professionals who openly reveal their relationships and financial arrangements; by trustees who scrupulously attend to their fiduciary responsibilities. Accountability and full disclosure are key ingredients necessary to maintain and foster the highest level of integrity in the bankruptcy system.

By itself, no one group can do the job of enhancing civil enforcement and improving the integrity of the bankruptcy system. Accomplishing this goal requires the concerted effort of everyone involved in the bankruptcy system, including the U.S. Trustee Program, the courts, Chapter 7 trustees, Chapter 13 trustees, creditors, and the bankruptcy bar. It is important to me to build a coalition of all of these groups to work together, to agree that the bar needs to be raised for bankruptcy practice, and to agree upon what to focus in order to raise the bar.

You have my word that I will work with all of you to bring prestige, honor, and dignity to our work and to the bankruptcy system uniformly throughout the country. I welcome your comments and suggestions on how we can accomplish this together.