



THE UNITED STATES TRUSTEE PROGRAM'S OVERSIGHT OF CHAPTER 7 PANEL TRUSTEES AND DEBTORS

U.S. Department of Justice
Office of the Inspector General
Audit Division

Audit Report 08-19
March 2008

THE UNITED STATES TRUSTEE PROGRAM'S OVERSIGHT OF CHAPTER 7 PANEL TRUSTEES AND DEBTORS

EXECUTIVE SUMMARY

The Bankruptcy Act of 1978 created the United States Trustee Program (USTP) as a component of the Department of Justice (DOJ) and charged the USTP with the responsibility for supervising the administration of bankruptcy cases and trustees, including Chapter 7 panel trustees. Chapter 7 panel trustees are usually attorneys or accountants who are appointed by the USTP to administer bankruptcy cases filed under Chapter 7 of the U.S. Bankruptcy Code.¹

As of June 2007, there were 1,140 Chapter 7 panel trustees operating nationwide, who processed a total of 484,162 Chapter 7 filings. Annually, Chapter 7 panel trustees are responsible for collecting over \$2.7 billion in funds through the liquidation of debtors' estates, and distributing those funds to creditors, in accordance with the Bankruptcy Code. Given the significant dollar amounts involved, the risks associated with the handling of cash and other liquid assets, and the inherently adversarial relationship between debtors and creditors, the integrity of the bankruptcy process relies on the effectiveness of panel trustees.

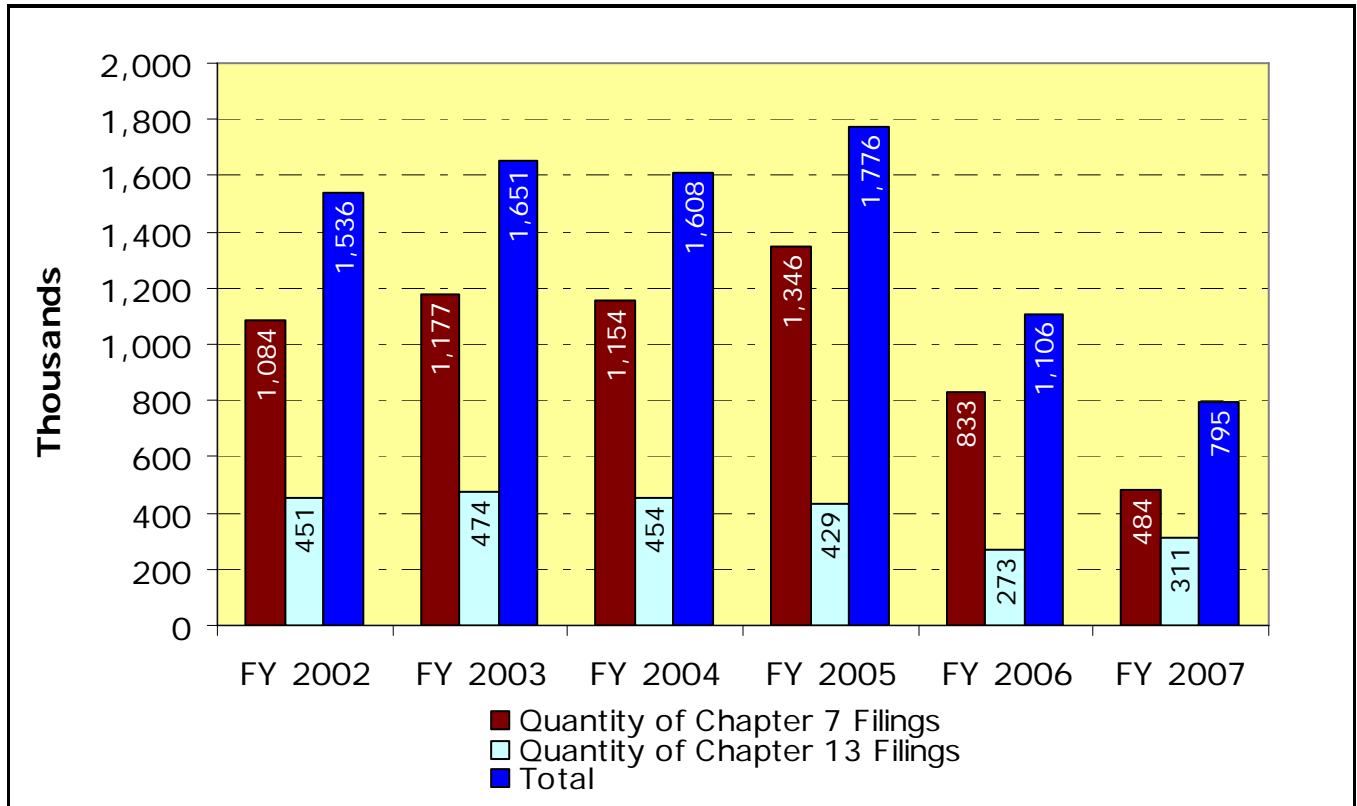
Passage of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA) on April 20, 2005, brought significant changes to the bankruptcy industry and created additional responsibilities for the USTP especially with regard to debtor oversight. Among the more significant changes was the implementation and monitoring of a screening process for all debtors filing for protection under Chapter 7 and Chapter 13 of the Bankruptcy Code.

Chapter 7 bankruptcy filings peaked in 2005 when they reached 1.3 million. After the implementation of BAPCPA requirements, Chapter 7 filings dropped to 833,000, and in 2007, Chapter 7 filings dropped even lower to 484,000. The table below shows the total number of Chapter 7 and 13 filings since 2002.²

¹ Bankruptcy under Chapter 7, also referred to as the "liquidation" Chapter, results in a debtor's non-exempt assets being reduced to cash by the panel trustee and distributed to creditors of the estate after administration expenses are paid. In most cases, the debtor then obtains a discharge of virtually all pre-bankruptcy debts.

² Under Chapter 13, debtors file a repayment plan with the court under which they agree to pay their debts over a period of usually 3 to 5 years. In these cases debtors obtain discharges from their debt upon completion of the repayment plan.

CHAPTER 7 AND 13 FILINGS FOR FISCAL YEARS 2002 THROUGH 2007



Source: EOUST

The USTP consists of the Executive Office for United States Trustees (EOUST), which is led by a Director who oversees 21 United States Trustee Regions each headed by a United States Trustee (UST). Within the 21 regions are 95 field offices each headed by an Assistant United States Trustee (AUST). The Director acts under authority delegated by the Attorney General to provide day-to-day policy, legal direction, and coordination to the regional offices. USTs are DOJ employees appointed by the Attorney General and are responsible for supervising the administration of bankruptcy cases and panel trustees within their region.

OIG Audit Approach

The objectives of this Office of the Inspector General (OIG) audit were: (1) to determine if the USTP is providing adequate monitoring and oversight of Chapter 7 panel trustees, and (2) to assess the USTP's compliance with requirements of the BAPCPA with regard to implementation of the means

test and debtor audits.³ We did not review other requirements of the BAPCPA, including the USTP's implementation of credit counseling and debtor education because the Government Accountability Office (GAO) has recently reviewed these issues.⁴

We conducted our audit work at EOUST headquarters in Washington, D.C., where we interviewed officials involved with panel trustee and debtor oversight; reviewed pertinent policies and procedures; and analyzed reports, memoranda, and other documents related to the oversight process. We also reviewed the process of awarding contracts to certified public accountants (CPA) for both panel trustee and debtor audits, and we examined the most recent contracts that were awarded, with a specific emphasis on the statements of work. Finally, we compared the recent CPA audit reports with previous Chapter 7 audits issued by the OIG.

In addition to our work at EOUST headquarters, we conducted site work at regional offices in Cleveland, Ohio; Los Angeles, California; San Francisco, California; and Seattle, Washington. At the regions, we interviewed the U.S. Trustees, Assistant U.S. Trustees, bankruptcy analysts and attorneys, and other field staff. We also examined audits and field examinations of panel trustee operations and reviewed files to determine whether adequate follow-up was performed to document corrective action taken on deficiencies identified in audits and field examinations. In addition, we examined files to determine whether the required panel trustee interim report reviews were performed. With regard to debtor oversight, we examined debtor audits that included material misstatements in order to determine whether appropriate follow-up procedures were followed. We also assessed the means testing process for debtor bankruptcy filings to determine whether means testing was being performed in accordance with the BAPCPA.⁵

³ Means testing refers to the process through which the USTP reviews and, if necessary, verifies the information provided by the debtor in order to make a determination whether the debtor qualifies for relief under Chapters 7 or 13 of the bankruptcy code. Debtor audits are performed by certified public accountants (CPA) to determine the accuracy, veracity, and completeness of debtors' petitions, schedules, and other information that the debtor is required to provide in cases filed under Chapters 7 or 13.

⁴ U.S. Government Accountability Office, *Bankruptcy Reform, Value of Credit Counseling Requirement is Not Clear*, GAO-07-778T, May 1, 2007, found that the BAPCPA had been implemented as required. However, the GAO also found that it is not possible to determine if debtors benefited from credit counseling and debtor education because there is no mechanism in place to track outcomes.

⁵ Appendix I contains further description of our audit objectives, scope and methodology.

Results in Brief

We found that the USTP's system of audits and reviews was adequate to monitor Chapter 7 panel trustees. However, from FYs 2004 through 2007 we noted that many field examinations were not conducted in a timely manner. USTP policy requires that a panel trustee receive a field examination or CPA audit every 4 years.⁶ We found that several panel trustees did not receive any on-site review of their work for up to 8 years. This lack of timely oversight increases the risk that poor performance or misconduct may be left unchecked and jeopardize the integrity of the bankruptcy system.

To assess the USTP's compliance with certain provisions of the BAPCPA, we also reviewed the USTP's implementation of means testing and debtor audits. We conducted a sample review of completed means tests and also observed and documented means tests being performed at UST field offices. Based on our review, we concluded that the USTP had adequate controls in place for Chapters 7 and 13 bankruptcy filings. Similarly, we found that debtor audits by contract CPA firms were being conducted in accordance with the BAPCPA. However, we noted that the USTP's efforts to achieve compliance with the BAPCPA's means testing requirement is resource intensive. Should bankruptcy filings increase significantly and approach their pre-BAPCPA levels, the amount of resources required to maintain means testing compliance may significantly affect the USTP's ability to provide timely and comprehensive oversight of other panel trustee operations.

In our report, we make four recommendations to assist the EOUST in implementing USTP policy and complying with BAPCPA requirements. Our recommendations include ensuring that panel trustees undergo CPA audits or UST field examination every 4 years, as required by EOUST policy, and that the EOUST continue to work with the Administrative Office of the United States Courts (AOUSC) to implement automated bankruptcy forms. The remaining sections of this Executive Summary describe in more detail our audit findings.

Oversight Regimen and Reforms

In conducting our audit, we focused on the oversight regimen established by the USTP, including:

⁶ CPA audits are required to be conducted every 8 years, while field examinations are required to be conducted 4 years after every CPA audit.

- **CPA Audits and Field Examinations.** Although similar in scope and methodology, field examinations are focused more on the trustee's case administration, whereas CPA audits provide a greater emphasis on the trustee's internal controls. In CPA audits, an independent CPA conducts an on-site review of a panel trustee's operations. Field examinations are performed by UST field staff. Both CPA audits and field examinations result in an opinion regarding the panel trustee's ability to safeguard bankruptcy case assets. The opinion rates the trustee's practices and procedures in one of three categories: adequate; adequate, except for certain listed deficiencies; or inadequate because of certain listed deficiencies (see Appendix VII for a list of possible deficiencies). CPA audits and UST field examinations are to be conducted on a rotating basis every 4 years.
- **Annual Trustee Interim Report Reviews.** A trustee interim report review assesses the trustee's activities and accomplishments during the reporting period. Conducted annually at the regional UST office, the trustee interim report review evaluates the panel trustee's completeness in reporting financial information on all asset cases, summarizes reported cases, provides case administration analysis, and evaluates the accuracy of case and asset information reports. The trustee interim report review is not performed in years in which an audit or a field examination is conducted.
- **Biennial Trustee Performance Reviews.** Trustee performance reviews do not involve on-site work, but are performed by UST field staff who document the panel trustee's performance during the review period. The review includes an evaluation in each of the trustee's areas of responsibility, such as trustee reporting, performance at the meeting of creditors, and securing estate property. The final results are communicated to the panel trustee.

Three major reforms came out of the 2005 BAPCPA that create other responsibilities for the USTP:

- **Means Testing.** Means testing prevents debtors who can repay their creditors from being discharged from their debts under protection of the Bankruptcy Code. Means testing is the process through which the USTP reviews and if necessary verifies the information provided on the debtor's Statement of Current Monthly Income and Means-Test Calculation (SCMI), debtor's bankruptcy petition, and supporting schedules to make a determination as to whether the debtor qualifies for relief under Chapters 7 or 13 of the

bankruptcy code.⁷ If filing under Chapter 7 and repayment is deemed possible, the debtor's case may be dismissed or the debtor may voluntarily convert to Chapter 13 of the Bankruptcy Code, which requires individuals to repay a portion of their debt under a payment plan – usually 3 to 5 years – or face dismissal of their case altogether.

- **Debtor Audits.** The BAPCPA mandated that a system of audits be established to determine the accuracy of information provided by individuals filing for bankruptcy under Chapters 7 or 13. The BAPCPA further states that the audits will be performed by independent CPAs or independent licensed public accountants. Cases are selected on a random or non-random basis with non-random selections based on income or expenses that deviate significantly from the norm.
- **Credit Counseling.**⁸ Individuals must receive credit counseling before filing for bankruptcy and also take a debtor education course before having debts discharged. The BAPCPA assigned responsibility to the USTP for implementing these requirements, including the development of rules and guidance and the certification of approved credit counseling and debtor education programs.

Monitoring Panel Trustees

To assess the oversight of panel trustees, we selected a judgmental sample of 54 panel trustees in 4 UST regions that we visited. We reviewed the CPA audits, field examinations, trustee interim report reviews, and biennial trustee performance reviews that were maintained in the files for the 54 panel trustees.

In addition, we obtained data from the EOUST on all CPA audits and field examinations conducted between FYs 2004 and 2007. As of June 2007, there were 1,140 panel trustees. Of this number, 34 panel trustees were

⁷ According to the BAPCPA, all individuals filing for bankruptcy relief under Chapters 7 or 13 are required to complete a SCMI and submit it to the court along with the bankruptcy petition. The SCMI requires the debtor to provide the following information: (1) current monthly income, (2) allowable deductions such as living expenses and future payments on secured claims, and (3) the median family income for the state in which the debtor resides. Based on the information provided, a debtor makes a self-assessment of eligibility for relief using a basic mathematical formula that is built into the SCMI. The SCMI is required to be submitted along with the debtor's bankruptcy application.

⁸ See GAO, *Bankruptcy Reform*. We did not test credit counseling because of the GAO's report.

appointed within the last 4 years and therefore were not required to have an audit or field examination. Therefore, we reviewed the information provided by the EOUST on the remaining 1,106 panel trustees to determine if the reviews were being performed as required.

Overall, we determined that the USTP's system of audits and reviews to monitor Chapter 7 panel trustees was adequate. However, we found that field examinations were sometimes delayed or not completed at all. Of the 1,106 panel trustees, 421 required an on-site field examination between FYs 2004 and 2007. Of the 421, we found that 111 (26 percent) of the panel trustees did not have a field examination conducted within the required 4 years. In 6 instances, the field examinations were not conducted at all, which means that the panel trustees were allowed to administer cases for 8 years without any on-site review. We also noted that annual trustee interim report reviews were not performed or consistently documented in the 4 regions that we visited. Of the total 156 trustee interim reports selected, we found that 28 reports (18 percent) were either not reviewed or there was no evidence to document the review. To the extent that the USTP fails to provide timely and effective oversight through its system of reviews, it increases the risk that a panel trustee's poor performance or misconduct may go undetected.

Debtor Oversight

The BAPCPA requires that the USTP perform means testing on all bankruptcies filed under Chapters 7 and 13. We selected a judgmental sample of 40 means test reviews in progress at the time of our field visits and followed up with the regional USTs to determine the outcome of the reviews.

Based on this sample review, we concluded that the USTP had adequate controls in place to ensure that means testing was conducted on Chapter 7 and Chapter 13 bankruptcy filings as required by the BAPCPA. However, both EOUST officials and UST field staff raised concerns regarding the level of resources that would be required to remain in compliance with the means testing requirements of the BAPCPA should bankruptcy filings return to their pre-BAPCPA levels.

However, if bankruptcy filings return to pre-BAPCPA levels, a significant reallocation of resources may be required. We believe that if the USTP does not plan for such an eventuality, it could compromise the agency's ability to provide effective oversight in other key areas, such as panel trustee operations.

During the course of this audit, we found that bankruptcy filings in 2007 were roughly half the number of filings recorded in the 3 years leading

to passage of the BAPCPA in October 2005. Even at 2007's historically low level of filings, however, efforts to achieve compliance with means testing requirements appear to have had an impact on the USTP's panel trustee oversight responsibilities. This was evident in the 26 percent failure rate we observed in the regional UST's ability to complete field examinations of panel trustee operations in a timely manner. One of the main reasons cited by both EOUST and regional UST officials for the decline in panel trustee oversight was the diversion of regional UST resources to means testing.

We could not confirm EOUST and UST officials' assertions. However, we believe that a correlation could exist because: (1) USTP staff are required to conduct panel trustee oversight as well as means testing, and (2) the decline in panel trustee oversight has coincided with the increase in debtor oversight mandated by the BAPCPA.⁹ The return of bankruptcy filings to their pre-BAPCPA levels, therefore, could have a significant impact on the USTP's ability to provide effective oversight in other key areas, in particular oversight of panel trustee operations.

To minimize the impact of the BAPCPA's means testing requirements, the EOUST has been working with the AOUSC to implement the use of standardized automated bankruptcy forms. EOUST officials stated that automated bankruptcy forms would significantly streamline the means testing process. However, the EOUST cannot unilaterally make such a change because the AOUSC is responsible for implementing automated bankruptcy forms. We agree with EOUST officials that the use of automated bankruptcy forms would streamline the means testing process, and believe that the EOUST should continue to work with the AOUSC to implement the use of automated forms.

We also reviewed the USTP's implementation of debtor audits based on the BAPCPA requirements. Independent auditors conduct debtor audits and issue either a report of audit or a report of no audit to the regional UST. Each report of audit is also filed with the court. The report of audit can include no findings or may include material misstatements.¹⁰ A report of no

⁹ UST field offices have developed a two-tiered system of means testing based on the complexity of the case. The tier-one review is designed to quickly assess and eliminate those means tests results that demonstrate the debtor is eligible for protection under the bankruptcy code. The tier-two review includes all cases where additional analysis is required to determine whether a presumption of abuse exists on the part of the debtor. USTP policy requires that UST field staff performing tier-one reviews should confer with paralegals, bankruptcy analysts, or trial attorneys if any questions arise as to whether a case should be closed or referred for a tier-two review.

¹⁰ Material misstatements are generally defined as the underreporting or omission of a debtor's assets. This may include, but is not limited to monthly income, bank accounts, personal property, and real property.

audit identifies when the audit firm receives no response from the debtor, an insufficient response from the debtor, or the case is dismissed before a sufficient response is received.

According to EOUST records, 4,095 debtor audits were selected for audit in FY 2007. This included 3,161 random audits and 934 non-random audits. The random audits represented 1 of every 250 of the roughly 795,000 filings recorded in FY 2007. Non-random audits are selected for cases when the debtor's income or expenses deviate significantly from the statistical norm of the district in which the schedules were filed. We verified the audit selection process and concluded that the BAPCPA criteria were followed. Additionally, we reviewed 12 debtor audits at the 4 regions that we visited that had resulted in audit reports with material misstatements. We verified that the regional UST was performing follow-up procedures on these audits in accordance with the BAPCPA. Based on the work performed by the independent auditors, we concluded that the debtor oversight provided by the USTP in the cases we reviewed was in accordance with the BAPCPA's requirements.

Conclusion and Recommendations

We concluded that the USTP's system of audits and reviews was adequate to monitor the effectiveness of panel trustee operations. However, while the oversight system was adequate, we noted some problems in its execution. Specifically, we found that many field examinations were not conducted within the required 4 year interval. We also noted that annual trustee interim report reviews were not always performed or consistently documented. Failure to complete these oversight activities in a timely manner could result in poor performance or misconduct by panel trustees going undetected.

With regard to debtor oversight, our review of the USTP's activities in the areas of means testing and debtor audits found that the USTP had met its obligations under the requirements of the BAPCPA. We noted, however, that means testing is a labor-intensive process, and that if bankruptcy filings return to their pre-BAPCPA levels, the diversion of resources required to remain in compliance with the BAPCPA may significantly affect the USTP's ability to accomplish its overall mission, particularly in the oversight of panel trustee operations.

Our audit made four recommendations to assist the EOUST in implementing USTP policy and complying with BAPCPA requirements. First, EOUST should ensure that CPA audits or UST field examinations are conducted every 4 years. Second, regional USTs should complete annual trustee interim report reviews for all panel trustees unless a CPA audit or UST field examination has been conducted within the same year. Third, the

EOUST should continue to work with the AOUSC to require mandatory use of automated bankruptcy forms. Fourth, the EOUST should formulate a strategic plan to meet means testing requirements in the event that filings increase and available resources remain static.

TABLE OF CONTENTS

INTRODUCTION	1
Background.....	2
USTP Oversight of Panel Trustees.....	3
Prior Audits.....	6
Audit Approach.....	7
FINDINGS AND RECOMMENDATIONS	9
I. MONITORING OF PANEL TRUSTEES	9
CPA Audits and UST Field Examinations.....	11
Trustee Interim Report Reviews.....	18
Biennial Trustee Performance Reviews.....	19
Conclusion.....	21
Recommendations.....	22
II. DEBTOR OVERSIGHT	23
Means Testing.....	24
Debtor Audits.....	29
Conclusion.....	32
Recommendations.....	33
APPENDICES:	
I. OBJECTIVES, SCOPE, AND METHODOLOGY	35
II. ACRONYMS	36
III. FORM 1: INDIVIDUAL ESTATE PROPERTY RECORD AND REPORT	37
IV. FORM 2: CASH RECEIPTS AND DISBURSEMENTS RECORD	38
V. FORM 3: SUMMARY INTERIM ASSET REPORT	42
VI. SAMPLE COPY OF CPA AUDIT REPORT	43
VII. EXAMPLES OF CONSEQUENTIAL DEFICIENCIES	53
VIII. ANALYSIS OF OVERDUE UST FIELD EXAMINATIONS	54
IX. OFFICIAL FORM 22A: CHAPTER 7 STATEMENT OF CURRENT MONTHLY INCOME AND MEANS-TEST CALCULATION	59
X. AUDITEE RESPONSE	65
XI. OFFICE OF THE INSPECTOR GENERAL, AUDIT DIVISION ANALYSIS AND SUMMARY OF ACTIONS NECESSARY TO CLOSE THE REPORT	70

This page intentionally left blank.

INTRODUCTION

The Bankruptcy Act of 1978 created the United States Trustee Program (USTP) as a component of the Department of Justice (DOJ) and charged the USTP with the responsibility for supervising the administration of bankruptcy cases and trustees, including Chapter 7 panel trustees. Chapter 7 panel trustees are usually attorneys or accountants who are appointed by the USTP to administer bankruptcy cases filed under Chapter 7 of the U.S. Bankruptcy Code. Panel trustees are not government officials, but rather are private individuals appointed by the USTP to serve a 1-year renewable term.

As of June 2007, 1,140 Chapter 7 panel trustees operated nationwide and processed a total of 484,162 Chapter 7 filings during fiscal year (FY) 2007. Annually, Chapter 7 panel trustees are responsible for collecting over \$2.7 billion in funds through the liquidation of debtors' estates, and distributing those funds to secured and unsecured creditors in accordance with the U.S. Bankruptcy Code. Given the significant dollar amounts involved, the risks associated with the handling of cash and other liquid assets, and the inherently adversarial relationship between debtors and creditors, the integrity of the bankruptcy process is dependent upon the effectiveness of panel trustees.

The Department of Justice Office of the Inspector General (OIG) initiated this audit of the USTP's oversight over panel trustees to determine whether mechanisms exist to ensure that bankruptcy assets are safeguarded and properly administered. Since FY 2004, the USTP has contracted with private audit firms to conduct this oversight work.¹¹ In addition to the audits, the USTP has relied on other mechanisms to monitor panel trustees' financial activity and case administration. We reviewed these various forms of oversight and discuss the results of our audit in the Findings and Recommendations Section of this report.

In addition, when we began our audit of the USTP's oversight over Chapter 7 panel trustees we considered the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA), which at the time was a relatively new law that included new requirements for the USTP in the area of debtor oversight. Among those requirements were (1) the implementation and monitoring of a screening process known as means testing, for all debtors filing under the Chapter 7 and Chapter 13 Bankruptcy

¹¹ From FYs 1990 to 2003, the OIG helped provide this oversight by auditing individual Chapter 7 panel trustees through a reimbursable agreement with the EOUST. During that time the OIG issued over 4,000 audit reports on individual Chapter 7 panel trustee operations.

Code; and (2) the implementation and monitoring of a system of random and non-random debtor audits by independent certified public accountant (CPA) firms. Given the USTP's oversight responsibilities, we also reviewed the USTP's efforts in meeting the new requirements included in the BAPCPA.

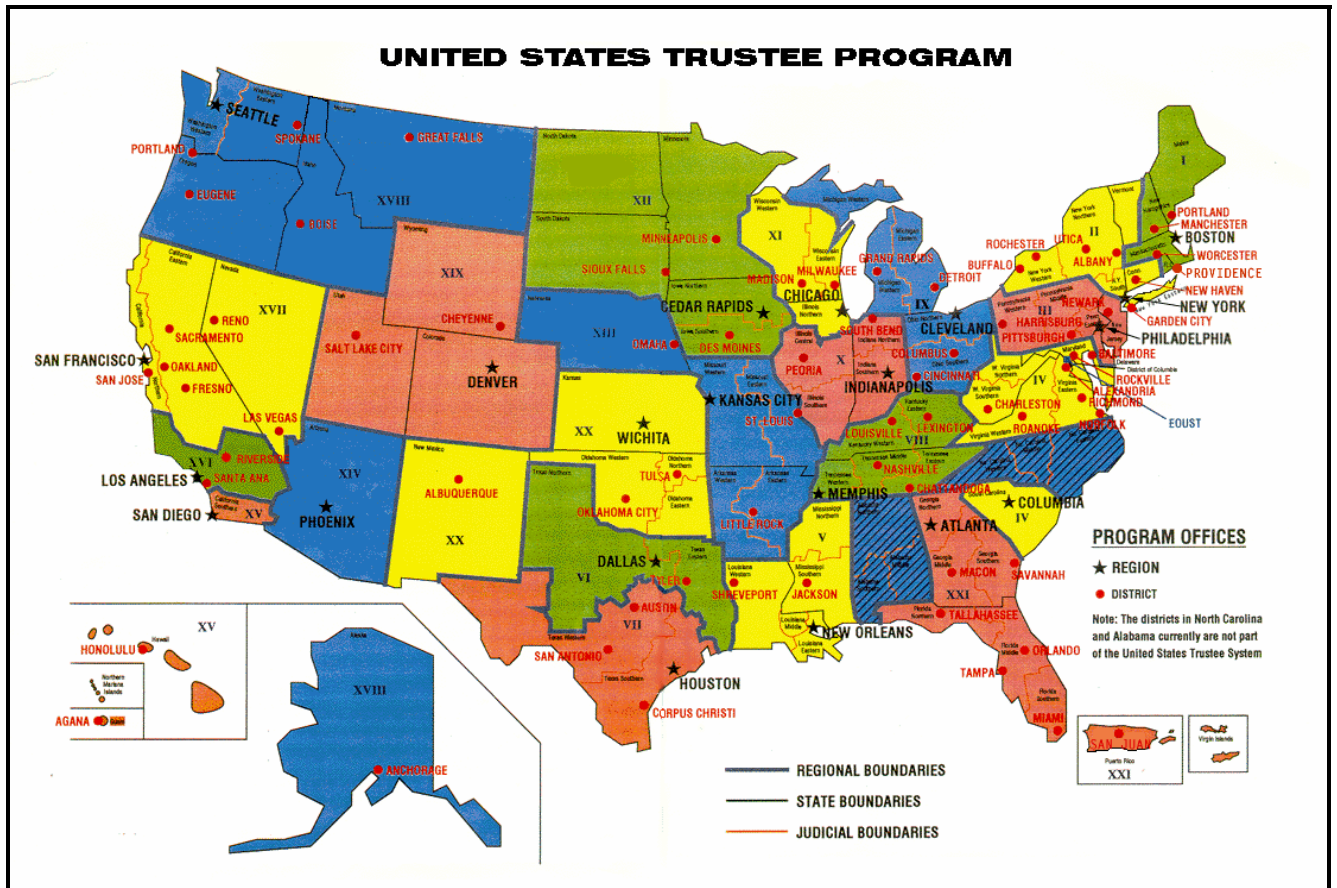
Background

The impetus for the USTP can be traced back to the Commission on the Bankruptcy Laws of the United States appointed by Congress in 1970 to evaluate and recommend changes in the substance and administration of the federal bankruptcy laws. The Commission found that case management under the prior Bankruptcy Act was inefficient, ineffective, and inconsistent. An independent study conducted by the Brookings Institution found similar problems with the system, especially with regard to the role of the bankruptcy trustee. This included the appearance of political patronage or cronyism in the appointment of trustees, inconsistency in the quality and ability of trustees, and actions by trustees that reflected their own economic interests above that of creditors. To address these problems, the Commission recommended the creation of an independent federal agency to provide oversight and promote integrity in the bankruptcy system.

The USTP is modeled after the organization for United States Attorneys, and consists of the Executive Office for United States Trustees (EOUST), which is led by a Director who oversees 21 United States Trustee Regions each headed by a United States Trustee (UST). Within the 21 regions are 95 field offices each headed by an Assistant United States Trustee (AUST). The Director acts under authority delegated by the Attorney General to provide day-to-day policy, legal direction, and coordination to the regional offices. USTs are DOJ employees appointed by the Attorney General and are responsible for supervising the administration of bankruptcy cases and panel trustees within their region.

The map below illustrates the 21 geographic regions of the USTP. The districts of Alabama and North Carolina are not part of the USTP, but rather have bankruptcy administrator offices in each of their judicial districts. We did not include the bankruptcy administrators in Alabama and North Carolina as part of our review.¹²

¹² Congress established the bankruptcy administrator program as part of the United States Courts system in 1986 to oversee the administration of bankruptcy cases, maintain a panel of private trustees, and monitor the transactions and conduct of parties in bankruptcy in Alabama and North Carolina.



Source: EOUST

USTP Oversight of Panel Trustees

According to the USTP, its supervisory duties are an ongoing process that begins when a panel trustee is assigned to a case and continues throughout the administration of the case. According to the USTP Manual, the goal in monitoring panel trustees is to establish a system that allows USTs to evaluate a panel trustee's competency and integrity in discharging his or her fiduciary duties.

The system established by the USTP consists of an oversight regimen that includes: (1) audits conducted by CPAs, (2) field examinations conducted by UST field office staff, (3) annual trustee interim reports, and (4) biennial trustee performance reviews.¹³

According to the USTP Manual on Chapter 7 Case Administration, CPA audits and UST field examinations are to be conducted on a rotating basis

¹³ Other reports submitted by the panel trustee include the Trustee Final Report, which summarizes all actions taken by the trustee to administer a case, and the Trustee Distribution Report, which certifies to the USTP that all funds have been disbursed and the case has been fully administered.

every 4 years. CPA audits are conducted by an independent CPA under contract with the EOUST and involve an on-site review of a panel trustee's operations. As mentioned earlier in this report, prior to FY 2004 audits of Chapter 7 panel trustees were conducted by the OIG under a reimbursable agreement with the EOUST.

Field examinations are also conducted on-site and are performed by UST field staff. CPA audits and UST field examinations are similar in scope and methodology. However, field examinations are focused more on the trustee's case administration, whereas CPA audits emphasize the trustee's internal controls over bankruptcy assets. Both CPA audits and field examinations result in the issuance of reports and require a formal resolution process to document corrective action taken to remedy any deficiencies identified.

Each panel trustee is required to submit annually a trustee interim report to the regional AUST. The trustee interim report reflects the panel trustee's activities and accomplishments during the reporting period such as the number of asset cases the Chapter 7 panel trustee is administering, the types of assets for each case and their dispositions, and a record of cash transactions (receipts and disbursements) for each case. Review of the trustee interim report is conducted at the regional UST office and includes: (1) an evaluation of the panel trustee's completeness of reporting, (2) a summary of reported cases, (3) a case administration analysis, and (4) an evaluation of the accuracy of case and asset information reports. The trustee interim report review is not performed in years in which an audit or a field examination is conducted.

In addition, UST field staff conduct a trustee performance review biennially to document the panel trustee's performance. The review includes an evaluation of the panel trustee's performance in each of the trustee's areas of responsibility. Like the trustee interim report reviews, the trustee performance reviews do not involve on-site visits but rather are performed at the regional UST field office and the results are communicated to the panel trustee.

Thus in any given year a panel trustee can expect one or more of the aforementioned reviews. The table below reflects a schedule of planned oversight activities for a panel trustee during an 8-year review cycle.¹⁴

¹⁴ This does not include day-to-day interaction between the panel trustee and UST field office staff, both formal and informal, that occurs throughout the administration of a trustee's caseload.

**TABLE 1: U.S. TRUSTEE PROGRAM
SCHEDULE OF OVERSIGHT ACTIVITIES**

Year of 8- Year Cycle	CPA Audit or UST Field Examination	Biennial Performance Review	Annual Trustee Interim Report (TIR) Review¹⁵
Year 1	CPA Audit	<i>None</i>	<i>None</i>
Year 2	<i>None</i>	Performance Review	TIR Review
Year 3	<i>None</i>	<i>None</i>	TIR Review
Year 4	<i>None</i>	Performance Review	TIR Review
Year 5	UST Field Examination	<i>None</i>	<i>None</i>
Year 6	<i>None</i>	Performance Review	TIR Review
Year 7	<i>None</i>	<i>None</i>	TIR Review
Year 8	<i>None</i>	Performance Review	TIR Review
Year 9	CPA Audit	<i>None</i>	<i>None</i>

Source: UST Manual, Volume 2

Bankruptcy Abuse Prevention and Consumer Protection Act of 2005

The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA) was enacted on April 20, 2005, with most of the law's provisions taking effect 6 months later on October 17, 2005. The BAPCPA created several additional responsibilities for the USTP, including the implementation and monitoring of: (1) means testing, (2) debtor audits, and (3) credit counseling.

- **Means Testing.** The BAPCPA created a means test requirement for all debtors filing for protection under Chapters 7 and 13 of the Bankruptcy Code and required that the USTP perform means tests on all debtor filings.¹⁶ The purpose of the means test is to prevent debtors who have the ability to repay their creditors from being

¹⁵ Trustee interim report reviews are not performed separately in the years that a CPA audit or UST field examination is scheduled. Rather, they are included as part of the audit or field examination.

¹⁶ Under Chapter 13, debtors file a repayment plan with the court under which they agree to pay their debts over a period of usually 3 to 5 years. In these cases debtors obtain discharges from their debt upon completion of the repayment plan.

discharged from their debts under protection of the Bankruptcy Code. The means test involves the review of the form entitled "Chapter 7 Statement of Current Monthly Income and Means-Test Calculation" (Official Form 22A), as well as the debtor's bankruptcy petition and supporting schedules.¹⁷ If filing under Chapter 7 and repayment is deemed possible, the debtor's case may be dismissed or the debtor may voluntarily convert to Chapter 13 of the Bankruptcy Code that requires individuals to repay a portion of their debt under a payment plan or face dismissal of their case altogether.

- **Debtor Audits.** The BAPCPA mandated that the USTP establish a system of audits to determine the accuracy of information provided by individuals filing for bankruptcy under Chapters 7 or 13 of the Bankruptcy Code. The BAPCPA provides that audits will be performed by independent CPAs or independent licensed public accountants. It further states that the cases will be selected for audit on a random basis as well as a non-random basis if income or expenses deviate significantly from the norm of the district in which the case was filed.
- **Credit Counseling.** The BAPCPA requires that individuals receive credit counseling before filing for bankruptcy and that they take a debtor education course before having debts discharged. The BAPCPA assigned responsibility to USTP for implementing these requirements, including the certification of approved credit counseling and debtor education programs.

As part of this audit, we reviewed the USTP's efforts in meeting the BAPCPA's means testing and debtor audit requirements. We did not test for compliance with credit counseling requirements because this issue was reviewed by the Government Accountability Office (GAO) in a May 2007 report, which is discussed under "Prior Audits."

Prior Audits

The GAO and the OIG conducted prior audits that have examined various aspects of the USTP and bankruptcy reform efforts. Below is a summary of two of those reports.

¹⁷ Supporting schedules are as follows: Schedule A (real property), Schedule B (personal property), Schedule D (creditors holding secured claims), Schedule E (creditors holding unsecured priority claims), Schedule F (creditors holding unsecured non-priority claims), Schedule H (co-debtor), Schedule I (current income of individual debtors), and Schedule J (current expenditures of individual debtor's statement of financial affairs).

In its report on bankruptcy reform, the GAO reviewed the implementation of the credit counseling requirement under BAPCPA and concluded that it had been implemented as required.¹⁸ However, the GAO found that because there is no mechanism in place to track the outcome of credit counseling sessions, it is not possible to determine the benefit of such counseling, if any, to debtors.

In our March 2003 audit report, we reviewed the management controls implemented by U.S. Trustee offices to identify and eliminate fraud and misconduct by debtors, panel trustees, and others.¹⁹ We found that the management controls in place were primarily focused on panel trustees and their employees and not on the debtors. We also found that when it came to debtor fraud the USTP relied too much on tips from third parties and panel trustee reviews of case information.

Audit Approach

The objectives of this audit were to determine if the USTP is providing adequate monitoring and oversight of Chapter 7 panel trustees and to assess the USTP's compliance with requirements of the BAPCPA, such as its implementation of the means test and debtor audits.

We conducted our audit work at EOUST headquarters in Washington, D.C., where we interviewed officials involved with panel trustee and debtor oversight; reviewed pertinent policies and procedures; and analyzed reports, memoranda, and other documents related to the oversight process. We also reviewed the process of awarding CPA contracts for both panel trustee and debtor audits, and examined the most recent contracts that were awarded with a specific emphasis on the statements of work. Finally, we performed a comparative analysis of the CPA audit reports with previous Chapter 7 audits issued by the OIG.

In addition to our work at EOUST headquarters, we conducted site work at regional offices in Cleveland, Ohio; Los Angeles, California; San Francisco, California; and Seattle, Washington. All 4 regions were among the top 10 regions for Chapter 7 bankruptcy filings in FY 2006, including Cleveland, which had the most filings in the nation. At the regions, we conducted interviews with the U.S. Trustees, Assistant U.S. Trustees, bankruptcy analysts and attorneys, and other field staff. We also examined

¹⁸ Government Accountability Office, *Bankruptcy Reform, Value of Credit Counseling Requirement is Not Clear*, GAO-07-778T, May 1, 2007.

¹⁹ Department of Justice, Office of the Inspector General, *The U.S. Trustee Program's Efforts to Prevent Bankruptcy Fraud and Abuse*, Report 03-17, March 2003.

audits and field examinations of panel trustee operations and reviewed files to determine whether adequate follow-up was performed to document corrective action taken on deficiencies identified in audits and field examinations. In addition, we examined files to determine whether the required panel trustee interim report reviews were performed. With regard to debtor oversight, we examined debtor audits that included material misstatements in order to determine whether appropriate follow-up procedures were followed. We also assessed the means testing process for debtor bankruptcy filings to determine whether means testing was being performed in accordance with the BAPCPA.

Appendix I contains further description of our audit objectives, scope and methodology.

FINDINGS AND RECOMMENDATIONS

I. MONITORING OF PANEL TRUSTEES

Our review of the USTP's monitoring activities from FYs 2004 through 2007 found that the schedule and procedural framework of audits and reviews established by the USTP was adequate for ensuring the competency and integrity of panel trustees in discharging their fiduciary duties. However, we found that, in practice the reviews were not always performed in a timely manner. Specifically, we found that UST field examinations — one of the USTP's primary oversight mechanisms — were not conducted timely for 26 percent of the trustees requiring field examinations during the review period. In several instances, field examinations were not conducted at all, due to delays in scheduling and performing field examinations. In these instances, the panel trustees were allowed to administer cases for up to 8 years without an on-site review of their operations. To the extent that the USTP does not conduct such reviews of panel trustees on a timely basis, it increases the risk that a panel trustee's poor performance or misconduct may go undetected.

To assess the USTP's effectiveness in monitoring panel trustees, we reviewed the program's oversight activities from FYs 2004 through 2007. In assessing the effectiveness of oversight we sought to determine whether the frequency and thoroughness of review provided by the USTP was sufficient to ensure the competency and integrity of panel trustees in discharging their fiduciary duties. We focused our review on several primary oversight mechanisms used by the USTP: independent CPA audits, field examinations, reviews of trustee interim reports, and biennial panel trustee performance reviews.

We selected for detailed review 54 panel trustees in the 4 UST regions. Our selection was based on a judgmental sample of 10 panel trustees or

20 percent of the total panel trustees in the region visited, whichever was greater.²⁰ We designed our selection to ensure that all field offices within each region visited were represented in our sample of panel trustees.²¹

For each of the panel trustees selected we reviewed files maintained at the regional UST office as well as files maintained by the EOUST in Washington, D.C. Specifically, our file reviews included evaluating whether: (1) CPA audits and field examinations were adequately documented, conducted in a timely manner, and deficiencies were adequately addressed; (2) annual trustee interim report reviews were performed by UST field staff and any discrepancies or problems were identified and resolved; and (3) biennial performance reviews were performed, adequately documented, and any performance issues were adequately addressed. In addition, our file reviews included an examination of available correspondence between the UST field offices and panel trustees. This included a review of formal correspondence such as notices of appointment or suspension, as well as informal correspondence such as e-mail or notes of telephone conversations.

The total number of CPA audits, field examinations, trustee interim report reviews, and biennial performance reviews that we examined by UST region visited is shown in the table below.

²⁰ Samples selected from the regional offices were as follows: Region 9: Cleveland, OH – 21 panel trustees; Region 16: Los Angeles, CA – 10 panel trustees; Region 17: San Francisco, CA – 10 panel trustees; and Region 18: Seattle, WA – 13 panel trustees.

²¹ UST field offices represented in our sample included: Region 9: Cleveland, Cincinnati, and Columbus, OH; and Detroit and Grand Rapids, MI. Region 16: Los Angeles, San Fernando Valley, Riverside, Santa Barbara, and Santa Ana, CA. Region 17: San Francisco, Oakland, San Jose, Sacramento, and Fresno CA; and Reno and Las Vegas, NV. Region 18: Seattle and Spokane, WA; Anchorage, AK; Boise, ID; Great Falls, MT; and Portland and Eugene, OR.

**TABLE 2: FILE REVIEW RESULTS FOR SAMPLE OF
54 CHAPTER 7 PANEL TRUSTEES
AT THE 4 UNITED STATES TRUSTEE REGIONS VISITED**

Regions Visited	CPA Audits	Field Examinations	Reviews of Trustee Interim Report	Biennial Performance Reviews
UST Region 9 (Cleveland, Ohio)	9	7	28	31
UST Region 16 (Los Angeles, California)	3	6	24	18
UST Region 17 (San Francisco, California)	5	4	19	16
UST Region 18 (Seattle, Washington)	6	10	25	25
TOTALS	23	27	96	90

Source: UST and EOUST Files

In addition to our file reviews, we analyzed data from the EOUST on all CPA audits and field examinations conducted between FYs 2004 and 2007. Our analysis included comparing the dates of the CPA audits and UST field examinations to when these reviews were required. In addition, we analyzed the results from the audits and examinations.

As of June 2007, there were 1,140 Chapter 7 panel trustees, of which 34 were appointed within the last 4 years and therefore were not required to have a CPA audit or field examination. Therefore, we reviewed the information provided by EOUST on the remaining 1,106 panel trustees to determine if the oversight reviews were being performed as required.

CPA Audits and UST Field Examinations

USTP policy requires that CPA audits and field examinations be conducted on a rotating basis every four years. Specifically, the policy requires that an independent CPA audit of a panel trustee's operations occur every 8 years, with a field examination to be conducted in the interim. As previously mentioned, CPA audits and UST field examinations are similar in scope and methodology. Both involve an on-site review of a panel trustee's case administration. However, field examinations are focused more on a panel trustee's case administration, whereas CPA audits provide a greater emphasis on a panel trustee's internal controls. Both CPA audits and field examinations result in the issuance of reports that render an opinion regarding the panel trustee's ability to safeguard bankruptcy case assets. The opinion states that the trustee's practices and procedures are either: (1) adequate; (2) adequate, except for select deficiencies that do not

warrant an inadequate opinion; or (3) inadequate because of consequential deficiencies, repeat findings, weak internal controls, lack of supporting documentation, or non-compliance.²²

According to USTP policy, a panel trustee must provide a written response to the regional UST within 45 days of the date of the written report confirming that any necessary corrective actions to address deficiencies has been taken and changes implemented, if necessary. If a CPA audit or UST field examination results in an inadequate opinion, USTP policy requires that the panel trustee be suspended from active rotation of handling bankruptcy cases. To be taken off rotation means that a panel trustee will not be assigned any new cases, but can continue to administer the cases already assigned. If the panel trustee that receives an inadequate opinion does not implement corrective actions to address the audit findings, the panel trustee may be removed.

CPA Audits

CPA audits of Chapter 7 panel trustees are conducted by independent CPA firms under contract with the EOUST and involve an on-site review of the panel trustee's operations. Currently, the EOUST has contracts with four national CPA firms that conduct audits of panel trustee operations throughout the country.

The scope of these CPA audits is modeled closely after the audits the OIG conducted of panel trustees from FY 1988 until FY 2003. In fact, according to the EOUST, the contracted CPA firms initially used the OIG's Chapter 7 audit program to conduct their panel trustee audits. Further, our review of the current statement of work for the CPA audits showed that it retained all of the original language included in the prior statement of work used under the EOUST's former reimbursable agreement with the OIG.

According to the current statement of work, the audits are to be conducted in accordance with government audit standards for performance audits except that: (1) the audit report is issued to the UST rather than the panel trustee; (2) the report contains no recommendations and is issued closed; and (3) findings are limited to identification of criteria and conditions.

The statement of work also provides that the objectives of the CPA audits are to: (1) determine if the trustee has established an appropriate system of internal controls to safeguard estate funds and property and to ensure integrity of financial recordkeeping and reporting; (2) determine if

²² A list of consequential deficiencies is located in Appendix VII.

the trustee maintains an appropriate asset administration system to adequately and promptly collect, protect, and administer estate funds and property in keeping with the trustee’s fiduciary duties; and (3) verify that internal controls, recordkeeping and reporting procedures, and asset administration procedures are operating effectively to ensure that all estate funds and property are accounted for and adequately protected against loss.

Of the 54 panel trustees that we reviewed in this audit, 23 had CPA audits completed of their activities. We determined that each of these audits were completed in accordance with the statement of work and all 23 panel trustees received either an “adequate” or “adequate except for” opinion. The table below shows the distribution of opinions for the reports we reviewed.

TABLE 3: CPA AUDIT OPINIONS FOR SAMPLE OF 54 PANEL TRUSTEES AT THE FOUR REGIONS VISITED

UST Region Visited	AUDIT OPINIONS			TOTAL Audits
	“Adequate”	“Adequate, Except For” ²³	“Inadequate”	
9 (Cleveland)	0	9	0	9
16 (Los Angeles)	0	3	0	3
17 (San Francisco)	0	5	0	5
18 (Seattle)	2	4	0	6
TOTAL	2	21	0	23

Source: UST and EOUST files

We also confirmed that the individual deficiencies identified in the CPA audit reports supported the overall opinions. We found all opinions to be consistent with the deficiencies identified. Further, we verified that the UST field staff followed up in a timely manner on deficiencies identified in each report we reviewed in order to ensure that corrective action was taken by the panel trustee.

As shown in the table above, of the 23 CPA audits that we reviewed for the 54 sampled panel trustees, there were no reports with an inadequate opinion. In order to evaluate how well the UST field offices monitored panel trustees who received inadequate CPA opinions, we selected 3 CPA audits with inadequate opinions that were not related to the 54 panel trustees we sampled. For each of these CPA audit reports, we found that the panel

²³ This category identifies audits where the auditor concluded that the trustee’s internal controls were generally adequate, but had noted one or more exceptions.

trustee was given a letter of suspension and that corrective action on deficiencies identified in the reports was taken before the panel trustee was reinstated.

As stated earlier in this report, we obtained from the EOUST data on all CPA audits conducted from FYs 2004 through 2007 and the resulting opinions, as shown in the table below.

TABLE 4: OPINIONS RESULTING FROM CPA AUDITS OF CHAPTER 7 PANEL TRUSTEES FROM FYs 2004 THROUGH 2007

Fiscal Year	"Adequate" Opinions		"Adequate, Except For" Opinions ²⁴		"Inadequate" Opinions		TOTAL Audits
	Quantity	Percent ²⁵	Quantity	Percent	Quantity	Percent	
2004	7	3%	189	94%	5	2%	201
2005	14	8%	147	88%	6	4%	167
2006	8	5%	139	94%	1	1%	148
2007	4	3%	125	94%	4	3%	133
TOTAL	33	5%	600	92%	16	2%	649

Source: EOUST

We analyzed the information from the EOUST's database related to these CPA audits by comparing the date of the most recent CPA audit to the date of the prior audit.²⁶ The purpose of this comparison was to determine whether the audit was performed within the 8-year cycle as required by USTP policy. We found that all 649 CPA audits within our period of review were conducted within the required timeframe.

UST Field Examinations

UST field examinations are to be conducted by the regional UST in the interim between audits to ensure that each panel trustee receives either an audit or a field examination every 4 years. Field examinations are designed to verify that the trustee's procedures for asset administration are adequate, case assets and funds are protected, and financial recordkeeping and

²⁴ This category identifies audits where the auditor concluded that the trustee's internal controls were generally adequate, but had noted one or more exceptions.

²⁵ Not all percentages add to 100 percent due to rounding.

²⁶ The prior audits were OIG audits conducted before FY 2004.

reporting are adequate and in accordance with the Handbook for Chapter 7 Trustees and sound business practices.²⁷

The objectives of the field examinations are to: (1) determine if the panel trustee maintains appropriate systems to adequately monitor asset administration and case progress, and promptly collect, protect, and administer case funds and property in keeping with the panel trustee’s fiduciary duties and in accordance with the Chapter 7 Handbook, Bankruptcy Code, local rules and sound business practices; (2) determine if the trustee has established appropriate procedures and internal controls to safeguard case funds and property, ensure the integrity of financial recordkeeping and reporting, and discourage employee theft in accordance with the Chapter 7 Handbook and sound business practices; and (3) verify that the trustee’s systems, procedures, and controls are operating effectively.

Of the 54 panel trustee files that we reviewed in the 4 regions we visited, 25 had field examinations performed during our review period, and each was completed in accordance with the USTP Manual. The table below shows the distribution of opinions for the field examinations we reviewed.

TABLE 5: FIELD EXAMINATION OPINIONS FOR SAMPLE OF 54 PANEL TRUSTEES AT THE FOUR REGIONS VISITED

UST Region Visited	FIELD EXAMINATION OPINIONS			TOTAL Field Examinations
	"Adequate"	"Adequate, Except For" ²⁸	"Inadequate"	
9 (Cleveland)	1	6	0	7
16 (Los Angeles)	1	5	0	6
17 (San Francisco)	1	3	0	4
18 (Seattle)	1	6	1	8
TOTAL	4	20	1	25

Source: UST and EOUST files

We also confirmed that the individual deficiencies identified in the field examinations supported the overall opinions. Further, we verified that the UST field staff followed up in a timely manner on deficiencies identified in

²⁷ The Handbook for Chapter 7 Trustees represents a statement of operational policy and is a working manual for Chapter 7 trustees under UST supervision.

²⁸ This category identifies audits where the auditor concluded that the trustee’s internal controls were generally adequate, but had noted one or more exceptions.

each field examination we reviewed in order to ensure that corrective action was taken by the panel trustee.

As shown in the table above, of the 25 field examinations that we reviewed for the 54 sampled panel trustees, one field examination resulted in an inadequate opinion. In order to determine how well the UST field offices handled panel trustees who received inadequate field examinations, we selected another 5 field examinations with inadequate opinions that were not related to the 54 panel trustees we sampled. For each of the inadequate field examinations, we found that the panel trustee was given a letter of suspension and that corrective action on deficiencies identified in the field examination was taken before the panel trustee was reinstated.

As stated earlier in this report, we obtained from the EOUST data on all field examinations conducted from FYs 2004 through 2007 and the resulting opinions, as shown in the table below.

TABLE 6: OPINIONS RESULTING FROM UST FIELD EXAMINATIONS OF CHAPTER 7 PANEL TRUSTEES FROM FYs 2004 THROUGH 2007

Fiscal Year	"Adequate" Opinions		"Adequate, Except For" Opinions ²⁹		"Inadequate" Opinions		TOTAL Field Exams
	Quantity	Percent	Quantity	Percent	Quantity	Percent	
2004	33	25%	97	72%	4	3%	134
2005	20	19%	79	76%	5	5%	104
2006	12	10%	101	85%	6	5%	119
2007	17	27%	43	67%	4	6%	64
TOTAL	82	19%	320	76%	19	5%	421

Source: EOUST

We analyzed the information from the EOUST's database related to these field examinations by comparing the date of the most recent field examination to the date of the preceding CPA or OIG audit. The purpose of this comparison was to determine whether the field examination was performed within 4 years of the preceding audit, as required by USTP policy. We identified 111 panel trustees (26 percent) for whom field examinations were either not conducted in a timely manner or were not conducted at all

²⁹ This category identifies audits where the auditor concluded that the trustee's internal controls were generally adequate, but had noted one or more exceptions.

between CPA audits.³⁰ In several instances, we found that the USTP had allowed panel trustees to operate for up to 8 years without an on-site review. As shown in the table below, untimely field examinations were noted in the following regions.

TABLE 7: UST FIELD EXAMINATIONS NOT COMPLETED IN TIMELY MANNER

UST Region	Number of Field Examinations not Performed within 4 Years of Last Audit
1	1
2	19
3	20
4	0
5	2
6	5
7	4
8	1
9	17
10	8
11	2
12	0
13	2
14	1
15	0
16	3
17	10
18	1
19	4
20	7
21	4
TOTAL	111

Source: EOUST

The lack of timely oversight with regard to field examinations for 26 percent of panel trustees is troubling, in that the USTP relies on these on-site reviews to identify deficiencies in a panel trustee’s operation that indicate weaknesses in the internal control structure and the potential for fraud. Furthermore, field examinations are one of the primary mechanisms used by the USTP to identify panel trustees whose performance is inadequate in order to safeguard debtors’ assets. To the extent that the USTP does not conduct reviews of panel trustees on a timely basis, it

³⁰ Field examinations for 54 of the 111 panel trustees (49 percent) were performed up to 1 year late.

increases the risk that a panel trustee's poor performance may go undetected. Moreover, the lack of active timely oversight increases the possibility that a panel trustee's poor performance or misconduct left unchecked may jeopardize the integrity of Chapter 7 bankruptcy administration.

EOUST officials explained that the untimely field examinations were caused in part by the new BAPCPA requirement related to means testing. Generally, bankruptcy analysts in field offices are responsible for conducting field examinations. However, with the implementation of the BAPCPA in 2006, bankruptcy analysts were given the added responsibility of conducting means tests and supervising others involved in the means test process. Both EOUST and regional UST officials characterized means testing as a labor-intensive process that has required a significant marshalling of resources at the field office level. In addition, EOUST officials stated that field examinations are one of several mechanisms that they use to monitor panel trustees and that if a field examination is not conducted in a timely manner the USTP has other means to detect poor performing panel trustees.

We agree with the EOUST that field examinations are one of several methods to monitor panel trustees. However, field examinations are one of only two oversight methods that involve on-site reviews of panel trustee operations. Just as with CPA audits, field examinations are valuable tools in identifying internal control weaknesses that can only be identified during a site visit. Therefore, we believe that the USTP should enhance its oversight and monitoring ability by ensuring that field examinations are conducted more consistently in a timely manner.

Trustee Interim Report Reviews

The USTP implemented the trustee interim report as part of its effort to create a uniform recordkeeping and reporting system for panel trustees. According to the USTP Manual, the trustee interim report provides information concerning a panel trustee's financial management, internal controls, and case administration. The report, which is submitted annually unless the USTP requires that it be filed more frequently, consists of 3 distinct reports: the individual estate property record and report (Form 1), the cash receipts and disbursements record (Form 2), and the summary interim asset report (Form 3). Form 1 provides details on a case's assets and the status of their disposition. Form 2 details the flow of cash in and out of each case account. Form 3 is an inventory of all cases expected or declared to be asset cases and summarizes information provided on Forms 1

and 2.³¹ Examples of Forms 1, 2, and 3 can be found in Appendices III through V.

The UST regional field offices are required to review each trustee interim report for accuracy and completeness and to ensure adherence to fiduciary standards in the administration of a panel trustee's cases. Furthermore, findings should be documented in writing and discussed, if appropriate, with the panel trustee. Trustee interim report reviews are not performed in the same year as a CPA audit or UST field examination because both audits and field examinations include the trustee interim report review as part of their engagement. Therefore, a separate review is not necessary.

From our review of 54 panel trustee files at the UST field offices, we identified 156 trustee interim report reviews that should have been performed by UST field office staff. We found that 128 (82 percent) of the trustee interim report reviews in our sample were conducted and these reviews included verification of accuracy and completeness. In addition, we found evidence in the files to indicate that UST field office staff followed up with panel trustees to obtain explanations for any findings that were identified. The remaining 28 (18 percent) of the trustee interim reports in our sample were either not reviewed or there was no evidence of review.³² In the 3 regions represented by the missing 28 trustee interim reports, UST officials explained that the additional workload created by the implementation of means testing required a shifting of resources and therefore less staff was available to perform trustee interim report reviews.

Biennial Trustee Performance Reviews

Trustee performance reviews are performed by UST field staff, usually by a performance review team that consists of a staff attorney and bankruptcy analyst or paralegal. USTP policy requires that performance reviews be conducted at least once every 2 years. According to the UST Manual, the goal of the review is to provide panel trustees with a written assessment of their performance, including their overall competency,

³¹ An asset case is a case where the debtor has sufficient non-exempt assets to allow for payments to creditors.

³² Region 9 had 15 trustee interim report reviews that were not completed (Detroit – 1, Grand Rapids – 3, Columbus – 1, and Cincinnati – 10) and 2 (Cleveland) where there was no evidence that the reviews were performed. Region 17 had 5 trustee interim report reviews not completed (Sacramento – 3, Oakland – 1, and San Jose – 1) and 1 (San Francisco) where there was no evidence that the review was performed. Region 18 had 1 trustee interim report review that was not completed (Montana) and 1 (Eugene) where there was no evidence that the review was performed.

adherence to fiduciary standards, and commitment to pursue assets for the benefit of creditors.

The performance review is organized around 15 separate duties of the trustee, with rating factors that mirror the audit and field examination opinions of adequate, adequate except for, and inadequate. The performance review categories are: (1) No Distribution Reports; (2) Trustee Final Reports and Trustee Distribution Reports; (3) Meetings of Creditors (§341 Meetings); (4) Securing estate property; (5) Legal administration; (6) Annual financial reports and operating Chapter 7 reports; (7) Case progress; (8) Banking; (9) Bonding; (10) Distribution to creditors; (11) Response to audits; (12) Response to UST; (13) Investigation of and response to bankruptcy fraud and abuse; (14) Response to public complaints; and (15) Retention and compensation of professionals.

The USTP relies heavily on the trustee performance review as another method of oversight for panel trustees. We reviewed the case files of the 54 panel trustees selected in the 4 regions we visited and examined 90 performance reviews and found that the regional UST offices we visited maintained the written performance reviews. The table below shows the distribution of the overall ratings for the 90 performance reviews we examined; of which only one of the 54 panel trustees received an inadequate rating.

TABLE 8: BIENNIAL PERFORMANCE REVIEWS FOR SAMPLE OF 54 PANEL TRUSTEES AT THE FOUR REGIONS VISITED

UST Region Visited	PERFORMANCE REVIEW RATINGS			TOTAL Performance Reviews
	"Adequate"	"Adequate, Except For" ³³	"Inadequate"	
9 (Cleveland)	20	11	0	31
16 (Los Angeles)	12	5	1	18
17 (San Francisco)	14	2	0	16
18 (Seattle)	23	2	0	25
TOTAL	69	20	1	90

Source: UST and EOUST files

In addition to our examination of the performance reviews for the sampled 54 panel trustees, we asked the EOUST whether any panel trustees

³³ This category identifies audits where the auditor concluded that the trustee's internal controls were generally adequate, but had noted one or more exceptions.

were removed from the panel or had resigned during our review period due to poor performance. According to the EOUST, a total of 75 panel trustees were either terminated or resigned. Of that total, 48 (64 percent) were related to the panel trustees' performance.³⁴ These statistics underscore the importance of performance reviews and how the USTP utilizes these reviews as part of its oversight responsibilities.

Conclusion

According to the USTP, its oversight duties are an ongoing process that begins when a panel trustee is assigned to a case and continues throughout the administration and closure of the case. Toward that end, the USTP has established an oversight regimen that includes audits performed by independent CPAs, field examinations performed by UST field staff, trustee interim report reviews, and trustee performance reviews.

Overall, we determined that the USTP's system of audits and reviews to monitor Chapter 7 panel trustees was generally adequate to ensure the integrity of the bankruptcy system. We found that CPA audits were conducted every 8 years, in accordance with USTP policy. However, in 26 percent of cases we found that field examinations were either not conducted timely or not completed at all. In several instances panel trustees operated for up to 8 years without any on-site review of their activities. Out of a total of 433 field examinations conducted or scheduled during the review period, the regional USTs failed to complete field examinations in a timely manner for 111 panel trustees or 26 percent. Both audits and field examinations are important oversight tools for the USTP in that they are designed to identify deficiencies in a panel trustee's operation that indicate weaknesses in the internal control structure and the potential for fraud. These reviews are the primary tools used by the USTP to suspend or remove a panel trustee whose performance is found to be inadequate for the safeguarding of debtors' assets. We also noted that annual trustee interim report reviews were not always performed or consistently documented. The trustee interim report reviews are important to the USTP in that they allow the regional field offices to assess panel trustee performance in the years between CPA audits and UST field examinations. Failure to complete field examinations and trustee interim report reviews in a timely manner may allow problems with a panel trustee's case administration to go undetected.

³⁴ The remaining 27 panel trustees resigned or were terminated for the following reasons: 15 – inadequate field examinations, 6 – inadequate CPA or OIG audits, 5 – unresolved background checks, and 1 – inability to obtain sufficient bonding.

Recommendations:

We recommend that the EOUST:

1. Ensure that panel trustees receive either a CPA audit or a UST field examination every 4 years in accordance with USTP policy.
2. Ensure that regional USTs complete annual trustee interim report reviews for all panel trustees in accordance with USTP policy.

II. DEBTOR OVERSIGHT

To assess the USTP's compliance with certain provisions of the BAPCPA, we reviewed the program's implementation of means testing and debtor audits, both of which are requirements of the legislation. Based on our sample review of means tests and observation of the review process at the UST field offices, we concluded that the USTP had adequate controls in place to ensure that means testing was conducted on all Chapter 7 and Chapter 13 bankruptcy filings as required by the BAPCPA. Similarly, we found that debtor audits conducted by contract CPA firms were being conducted in accordance with the BAPCPA. Based on the work performed in both means testing and debtor audits, we concluded that the debtor oversight provided by the USTP was in accordance with requirements of the BAPCPA. However, with regard to means testing, we raise a caution that if bankruptcy filings rise to pre-BAPCPA levels it could require a significant reallocation of regional UST resources from other activities, including field examinations to means testing. Failure to plan for such an occurrence could compromise the USTP's ability to provide oversight of panel trustee activities.

As noted earlier, most provisions of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA) took effect on October 17, 2005. According to the EOUST, Congress enacted the BAPCPA, in part, to curtail perceived abuses of the bankruptcy system by debtors.³⁵ To achieve this objective, Congress amended §707(b) of the Bankruptcy Code to change the pro-debtor presumption that existed prior to BAPCPA with an approach that is designed to identify debtors who are abusing the bankruptcy system.

The impact of the legislative changes on the USTP was largely in the area of debtor oversight and included a mandate requiring a screening mechanism known as "means testing" on debtor income and expenses to ensure that debtors qualified for bankruptcy protection. In addition, BAPCPA required independent audits of debtors' bankruptcy filings to ensure that the information being submitted in a bankruptcy petition was accurate and supported.

³⁵ Mark A. Redmiles and Melissa R. Perry, "Means Testing Under the New Bankruptcy Law," *United States Attorneys' USA Bulletin*, August 2006, 20.

Means Testing

According to the BAPCPA, all individuals filing for bankruptcy relief under Chapters 7 or 13 are required to complete a Statement of Current Monthly Income and Means-Test Calculation (SCMI), Official Form 22A, and submit it to the court along with the bankruptcy petition.³⁶ The SCMI requires the debtor to provide the following information: (1) current monthly income, (2) allowable deductions such as living expenses and future payments on secured claims, and (3) the median family income for the state in which the debtor resides.³⁷ Based on the information provided, a debtor makes a self-assessment of eligibility for relief using a basic mathematical formula that is built into the SCMI.

Means testing refers to the process through which the USTP reviews and, if necessary, verifies the information provided on the debtor's SCMI, the debtor's bankruptcy petition, and supporting schedules to make a determination as to whether the debtor qualifies for relief under Chapters 7 or 13 of the bankruptcy code. The BAPCPA requires that the USTP perform means testing on all bankruptcies filed under Chapters 7 and 13.

Our review of the means testing at the four regional UST offices we visited found that the USTP had implemented a semi-automated process to facilitate the performance of means testing. The Means Test Review (MTR) system was implemented at the field office level to document the means testing process for quality control purposes and to ensure the review of all Chapter 7 bankruptcies filed, in accordance with the BAPCPA.³⁸ The MTR system is linked to the USTP's Automated Case Management System (ACMS).

The MTR system is used by the USTP to track bankruptcy filings received from the U.S. Courts. Updated by the ACMS, the MTR system contains current copies of Chapter 7 bankruptcy documents filed with the court, including the debtors' SCMI, bankruptcy petition, and supporting schedules. However, while the documents are maintained electronically

³⁶ There are two exceptions to debtors who must file the Official Form 22A: (1) debtors whose debt is not primarily consumer debt; or (2) disabled veterans who incurred their debt while on active duty or engaged in a homeland defense activity. A copy of the Official Form 22A is shown in Appendix IX.

³⁷ The BAPCPA defines current monthly income as "the average monthly income from all sources that the debtor receives without regard to whether such income is taxable income." The average is based on the 6-month period preceding case commencement.

³⁸ Chapter 13 cases are performed and tracked separately from Chapter 7 cases.

through the MTR system, the actual review of the documents and analysis of the financial data contained in those documents is a manual process.

Means Testing Methodology

To address the large volume of bankruptcy filings requiring means testing, UST field offices have developed a triaged approach to means testing based on the complexity of the case. In applying this methodology, most regional UST field offices have established a two-tiered system of review.

The tier-one review is designed to quickly assess and eliminate from further analysis those means tests where the results clearly demonstrate that the debtor is eligible for protection under the bankruptcy code. The main determining factor in establishing a presumption of abuse is the debtor's current monthly income as reported on the SCMI. Generally, if the debtor's monthly income is less than that of the median family income as determined by the U.S. Census Bureau for the debtor's state of residence, then a presumption of abuse does not exist and the means test is concluded.³⁹ Because tier-one reviews require only a cursory analysis of the filing documents, the review is performed by support staff, usually paralegals and legal clerks. UST field staff stated that approximately 90 percent of all means tests are concluded at the tier-one level. We were not able to verify this percentage because the UST offices and the EOUST did not maintain statistics on how many means tests were completed after a tier-one review and how many were referred to the tier-two analysis.

The second-tier review includes all cases where additional analysis is required to make a determination as to whether a presumption of abuse exists on the part of the debtor. USTP policy requires that UST field staff performing tier-one reviews should confer with paralegals, bankruptcy analysts, or trial attorneys if any questions arise as to whether a case should be closed or referred for a tier-two review.

Tier-two reviews are performed primarily by USTP professional staff, usually bankruptcy analysts and attorneys. The reviews involve further fact finding, analysis, and usually require the reviewer to contact the debtor's attorney, financial institutions, and other parties to the bankruptcy to obtain the necessary information to determine whether a presumption of abuse exists.

³⁹ The USTP posts the median family income data published by the U.S. Census Bureau on its website at www.usdoj.gov/ust under Bankruptcy Reform - Means Testing Information.

Under Section 704(b)(1)(A) of the Bankruptcy Code, the regional UST must file a statement with the court indicating that a case is presumed abusive within 10 days of the date on which the Section 341 Meeting of Creditors occurs.⁴⁰ In order to meet the 10-day deadline, the USTP policy requires that field offices initiate their means testing no later than 7 calendar days following the Section 341 Meeting.

We selected a judgmental sample of 40 tier-two reviews in progress at the time of our field visits and followed up with the regional USTs to determine the outcome of the reviews.⁴¹

TABLE 9: DISPOSITION OF TIER-TWO MEANS TESTING FOR SAMPLE SELECTED AT FOUR UNITED STATES TRUSTEE REGIONS

Disposition of Tier-Two Means Testing ⁴²	UST Region 9 (Cleveland, Ohio)	UST Region 16 (Los Angeles, California)	UST Region 17 (San Francisco, California)	UST Region 18 (Seattle, Washington)	Totals
Discharged	6	5	9	8	28
Dismissed	2	3	0	1	6
Converted to Chapter 13	0	2	1	1	4
Voluntary Removal	0	0	0	0	0
Motion to Dismiss	2	0	0	0	2
TOTALS	10	10	10	10	40

Source: UST Files

When we asked UST field office staff how many means tests were completed at each tier level, UST staff said they believe approximately 90 percent of means tests are concluded at the tier-one level without a presumption of abuse. An additional 1 to 2 percent of filings at the tier-two level are found to be non-abusive upon further review. For the remaining 8

⁴⁰ The Section 341 Meeting of Creditors, sometimes referred to as “First Meeting of Creditors,” is intended to provide an opportunity early in the case for creditors, a panel trustee, and the United States Trustee (UST) to ask questions of the debtor. The regional UST appoints an interim panel trustee for the case, but creditors may have the right to elect a different individual for the duties.

⁴¹ We judgmentally selected 10 means tests at the tier-two level from each of the 4 regional UST field offices that we visited.

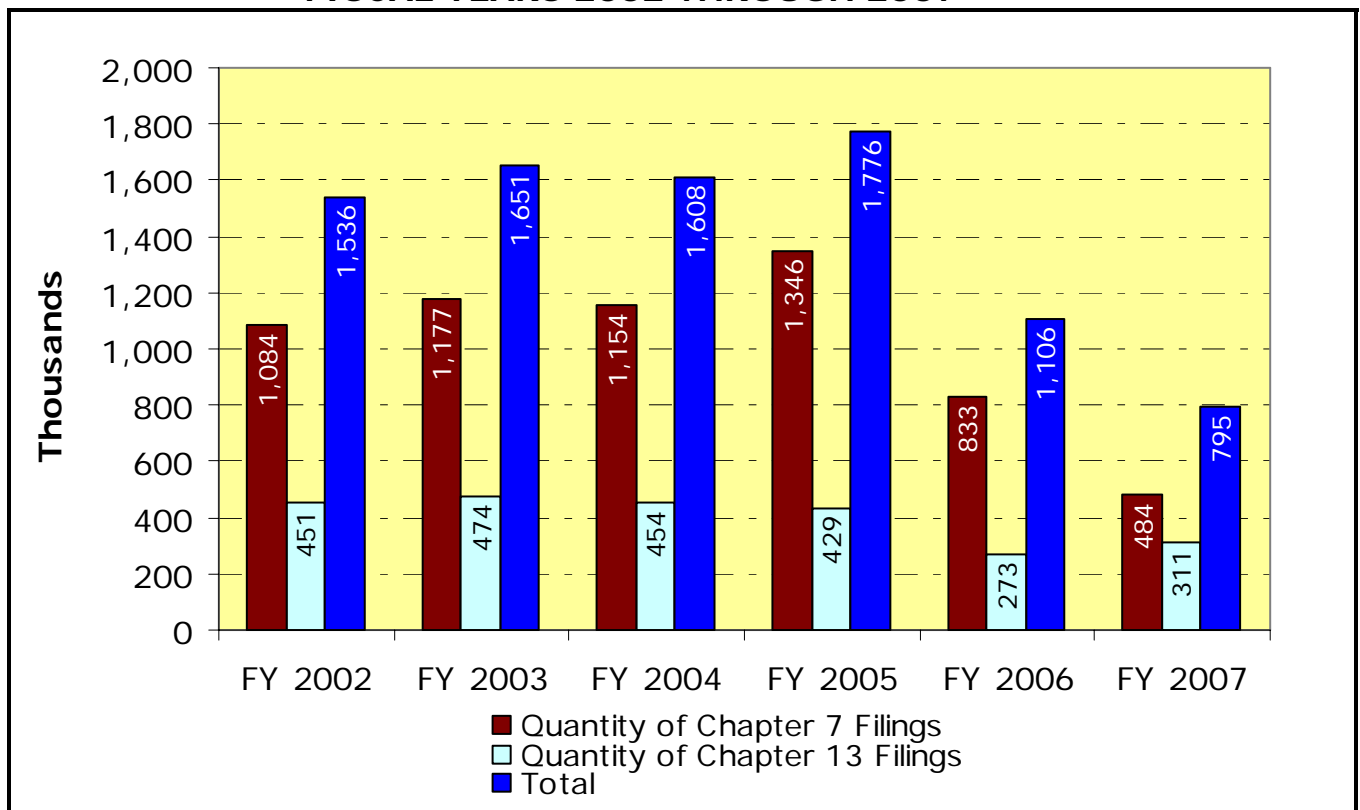
⁴² “Discharged” means that the debts have been discharged and the case is being administered as a Chapter 7 case. “Dismissed” means that the debtor does not qualify for bankruptcy protection under Chapter 7. “Motion to dismiss” means that the UST has filed a motion before the U.S. Bankruptcy Court to dismiss the case, but there was no final ruling as of December 2007.

to 9 percent in which a presumption of abuse is concluded, the regional UST field office must file a statement with the court.

Effect of Means Testing Activities on Other Responsibilities

Based on our sample review of means tests and observation of the means testing process, we concluded that the USTP had adequate controls in place to ensure that means testing was conducted on all Chapter 7 and Chapter 13 bankruptcy filings, as required by the BAPCPA. However, during our review EOUST officials and UST field staff raised concerns regarding the level of resources that would be required to remain in compliance with the BAPCPA's means testing requirements should bankruptcy filings return to their pre-BAPCPA levels (i.e., before FY 2006). The steady growth in bankruptcy filings up until passage of the BAPCPA in October 2005 are shown in the table below.

CHART 1: CHAPTER 7 AND 13 FILINGS FOR FISCAL YEARS 2002 THROUGH 2007



Source: EOUST

As indicated in the above chart, bankruptcy filings in 2007 were roughly half the number of filings recorded in the 3 years leading up to passage of the BAPCPA in October 2005. Even at 2007's historically low level of filings, however, efforts to achieve compliance with means testing requirements appear to have had an impact on the USTP's panel trustee

oversight responsibilities. As mentioned in Finding 1, one of the main reasons provided by both EOUST and regional UST officials for the failure to perform UST field examinations and trustee interim report reviews in a timely manner was the diversion of resources to means testing.

While we could not confirm EOUST and UST officials' assertions, it appears to be a reasonable conclusion given that the bankruptcy analysts who are responsible for performing field examinations and trustee interim report reviews are also responsible for supervising tier-one means tests and for performing the more complicated tier-two level means tests. In addition, the fact that the decline in panel trustee oversight has coincided with the increase in debtor oversight mandated by the BAPCPA lends credence to the suggestion that there is a correlation. Therefore, return of bankruptcy filings to their pre-BAPCPA levels could have a significant impact on the USTP's ability to provide effective oversight in key areas, specifically panel trustee operations. Some EOUST officials believe that the decline in bankruptcy filings is a short term phenomenon resulting from the passage of the BAPCPA and that ultimately bankruptcy filings will return to their pre-BAPCPA levels.

We asked EOUST management whether they had conducted any resource studies following implementation of means testing to determine their current resource requirements in order to plan for future resource requirements should filings return to pre-BAPCPA levels. We were told that no such studies had been conducted.

EOUST Efforts to Streamline the Means Testing Process

EOUST officials informed us that they were working with the Administrative Office of the U.S. Courts (AOUSC) to streamline the filing process through the introduction of standardized automated forms for debtors filing for bankruptcy. According to the EOUST, the use of automated forms would allow for the electronic sorting and analysis of the forms, which would significantly streamline what is currently a manual review process. EOUST officials explained that they had been working with the AOUSC to require mandatory use of the "data enabled form standard" developed jointly by the USTP and the AOUSC, which is compatible with the U.S. Bankruptcy Court system. In September 2005, a final standard was issued.⁴³

We spoke to AOUSC officials involved in the project, who acknowledged that development of standardized automated forms would benefit the USTP's case management. However, the AOUSC expressed concerns about the economic impact that the mandatory acquisition of the

⁴³ Redmiles and Perry, "Means Testing Under the New Bankruptcy Law," 28, 29.

software necessary to generate such forms would have on the bankruptcy industry, in particular the smaller private firms that assist debtors in the filing process. Therefore, although the AOUSC agrees on a conceptual level that the USTP may benefit from the automated forms, on a practical level the AOUSC is hesitant to initiate a sweeping change out of concern for the economic effect this may have on debtors and debtors' attorneys.

In our opinion, the EOUST needs to plan for the eventuality that bankruptcy filings may return to their pre-BAPCPA levels. If this occurs before the introduction of automated forms can be implemented, then UST regional field offices may be faced with the need to divert greater resources to means testing in order to remain in compliance with the BAPCPA. As mentioned previously, failure to plan for this possibility may compromise the USTP's ability to provide effective oversight in other areas, in particular panel trustee oversight.

As part of our review, we attempted to quantify the impact of means testing on the USTP's resource allocation. While USTP officials said tier-one reviews can be completed in 5 to 10 minutes, they could not provide estimates for tier-two means testing.⁴⁴

Debtor Audits

Section 603(a)(1) of the BAPCPA required the USTP to establish a system of audits to determine the accuracy, veracity, and completeness of petitions, schedules, and other information that the debtor is required to provide in cases filed under Chapters 7 or 13, beginning with cases filed on or after October 20, 2006.⁴⁵ Section 603 also requires that audits be performed by independent CPAs or independent licensed public accountants. At the time of our review, the EOUST had contracted with six CPA firms to perform debtor audits.⁴⁶

⁴⁴ Based on conversations with the 10 UST regions that posted the most bankruptcy filings in FY 2007, 5 to 10 minutes was generally how long it took for the tier-one review to be completed.

⁴⁵ Section 603(a) of the BAPCPA required that audits be conducted in accordance with generally accepted auditing standards but allowed the Attorney General to develop "alternative auditing standards" not later than 2 years after the date of enactment. The EOUST developed alternative auditing standards, which were published in the Federal Register, Volume 71, No. 190, dated October 2, 2006.

⁴⁶ These contracts with CPA firms were separate from the contracts the EOUST had with CPA firms to conduct audits of panel trustees discussed in Finding 1.

Under the BAPCPA, the selection of audits for review is to be done on both a random and a non-random basis: (1) random audits are to be selected to ensure that not less than 1 out of every 250 cases in each federal judicial district is selected for audit, and (2) non-random audits are to be selected for cases where the debtor's income or expenses deviate significantly from the statistical norm of the district in which the schedules were filed.

Once the selection is made, the EOUST notifies the CPA firm and the applicable regional UST. The regional UST then sends formal notification to the debtor's attorney or the debtor in *pro se* cases that the case has been selected for audit, and identifies the documents to be provided to the CPA firm.⁴⁷ Documents audited include the bankruptcy petition and accompanying schedules. Additional documentation may include tax returns, pay stubs, bank statements, and credit card statements. The CPA firm reviews the documents provided, giving the debtor time to provide a written explanation for any potential material misstatements before an audit report is issued to the regional UST.

Depending on the results of the audit, the independent auditor issues either a "report of audit" or a "report of no audit". A report of no audit is issued when the audit firm receives no response from the debtor, an insufficient response from the debtor, or the case is dismissed before a sufficient response is received. Each report of audit is filed with the court and transmitted to the regional UST, and can include no findings or may include material misstatements. Material misstatements are generally defined as the underreporting or omission of a debtor's assets. This may include, but is not limited to monthly income, bank accounts, personal property, and real property.

The BAPCPA requires certain follow-up on the part of the regional UST in response to debtor audits. If the debtor does not cooperate or the nature of the findings warrant, the regional UST may seek a dismissal of a case or denial of a debtor's discharge from bankruptcy. The regional UST is required to report material misstatements to the local United States Attorney when the regional UST office has reason to believe that a debtor is attempting to commit fraud.

We verified the process through which the audits were selected and concluded that they were selected in accordance with the criteria established by the BAPCPA. According to EOUST records, of the roughly 795,000 Chapter 7 and 13 filings recorded in FY 2007, the EOUST selected 4,095

⁴⁷ A debtor in a *pro se* case is one who files for bankruptcy protection without using the services of an attorney.

cases for audit. The table below shows the number of cases that resulted in debtor audits.

TABLE 10: DEBTOR AUDITS SELECTED AND CONDUCTED IN FY 2007

	Random Debtor Audits ⁴⁸	Non-random Debtor Audits ⁴⁹	Total
Cases Selected for Audit	3,161	934	4,095
Debtor Audits with Reports Issued	1,900	709	2,609
Debtor Audits in Progress	1,063	152	1,215
Reports of No Audit Filed ⁵⁰	198	73	271
TOTALS	3,161	934	4,095

Source: EOUST

Of the 2,609 debtor audits that were completed in FY 2007, 780 (30 percent) included at least one material misstatement. In the 4 regions we visited, we selected a judgmental sample of 12 debtor audits that had resulted in audit reports with material misstatements. We verified that the regional UST offices were performing follow-up procedures in accordance with the BAPCPA.

According to the EOUST, CPA firms identified suspected criminal activity on the part of the debtor in 37 of the 2,609 debtor audits completed in FY 2007. When suspected criminal activity is identified, the regional UST is notified. After further review by the regional UST, the debtor's case can be referred to the U.S. Attorney's Office for possible prosecution. The table below shows the disposition of the 37 debtor audits identified by the CPA firms as having suspected criminal activity.

⁴⁸ The random audits represented 1 of every 250 of the total Chapter 7 and 13 filings in FY 2007.

⁴⁹ Non-random audits are judgmentally selected by the EOUST based on the debtor's reported income or expense that exceed the statistical norm for the judicial district in which the debtor resides.

⁵⁰ Reports of no audit filed represents cases where the CPA firm does not receive requested information from the debtor or debtor's attorney to allow for the audit of the debtor's petition. As a result, the CPA firm files a "Report of No Audit" with the EOUST and the regional UST office follows up with the debtor or debtor's attorney. If the debtor or debtor's attorney does not provide the necessary documentation that is requested as part of a Debtor's Audit, the case may be dismissed.

TABLE 11: DEBTOR AUDITS WITH SUSPECTED CRIMINAL ACTIVITY

Description of Disposition	Number of Debtor Audits
Cases Determined by Regional UST to have insufficient evidence of suspected criminal activity	12
Cases Still Under Review at Regional UST	10
Cases Referred to U.S. Attorney's Office:	
Prosecution declined by U.S. Attorney's Office	2
With Investigative Agency	8
Under review in U.S. Attorney's Office	5
Total Cases Referred to U.S. Attorney's Office	15
TOTAL	37

Source: EOUST

Conclusion

We reviewed the USTP's oversight activities in the areas of means testing and debtor audits, both of which are mandated by the BAPCPA. We found that regional UST field offices were conducting means tests on bankruptcy filings in accordance with the legislation. We also found that the EOUST contracted with CPA firms to meet the BAPCPA requirement to conduct debtor audits. In FY 2007, 2,609 debtor audits were completed, of which 780 identified at least one material misstatement. According to the sample we selected, we were able to determine that the regional UST offices followed up on audits that included material misstatements.

We noted that the USTP's effort to achieve compliance with means testing requirements is resource intensive. Should bankruptcy filings increase significantly and approach their pre-BAPCPA levels, the diversion of resources required to maintain means testing compliance may significantly affect the USTP's ability to provide timely and comprehensive oversight of panel trustee operations.

Recommendations:

We recommend that the EOUST:

3. Continue to work with the Administrative Office for United States Courts to require mandatory use of the jointly developed "data-enabled form standard."
4. Formulate a plan addressing allocation of resources, prioritization of duties, and streamlining of processes in order to meet means testing requirements in the event of a significant increase in bankruptcy filings.

This page intentionally left blank.

OBJECTIVES, SCOPE, AND METHODOLOGY

Objectives

The objectives of the audit were: (1) to determine if the USTP is providing adequate monitoring and oversight of Chapter 7 panel trustees and (2) to assess the USTP's compliance with requirements of the BAPCPA with regard to implementation of the means test and debtor audits.

Scope and Methodology

We conducted the audit in accordance with the *Government Auditing Standards* and included the tests and procedures necessary to accomplish our objectives. Our testing included, but was not limited to the period between October 1, 2005, and September 30, 2007.

We performed on-site audit work between March and August 2007 at EOUST headquarters in Washington, D.C., and at regional and district offices in Los Angeles and San Francisco, California; Seattle, Washington; and Cleveland, Ohio.

To accomplish our objectives we:

- researched and reviewed applicable laws, policies, regulations, manuals, and memoranda;
- interviewed officials at EOUST and regional UST field offices;
- obtained and analyzed statistical data maintained by EOUST;
- reviewed the means testing process at four regional UST field offices;
- reviewed debtor audits resulting in material misstatements at four regional UST field offices to assess UST follow-up;
- reviewed 23 CPA audit reports and 25 UST field examinations, including all audit reports and UST field examinations with inadequate opinions during the review period at the 4 regional UST offices to assess UST follow-up; and
- examined UST regional field office case files to determine whether trustee performance reviews and trustee interim report reviews were performed and documented and to assess UST follow up.

ACRONYMS

ACMS	Automated Case Management System
AUST	Assistant United States Trustee
BAPCPA	Bankruptcy Abuse Prevention and Consumer Protection Act of 2005
EOUST	Executive Office for United States Trustees
NDR	No Distribution Report
SCMI	Chapter 7 Statement of Current Monthly Income and Means-test Calculation
TDR	Trustee Distribution Report
TFR	Trustee Final Report
UST	United States Trustee
USTP	United States Trustee Program

FORM 1
INDIVIDUAL ESTATE PROPERTY RECORD AND REPORT
ASSET CASES

Case No.: [REDACTED] Trustee Name: [REDACTED]
 Case Name: [REDACTED] Date Filed (f) or Converted (c): 11/20/02(f)
 For Period Ending: 6/30/03 § 341(a) Meeting Date: 12/20/02
 Claims Bar Date: 3/20/03

1	2	3	4	5	6
Asset Description (Scheduled and Unscheduled (u) Property)	Petition/ Unscheduled Values	Estimated Net Value (Value Determined by Trustee, Less Liens, Exemptions, and Other Costs)	Property Abandoned OA=\$554(a) abandon. DA=\$554(c) abandon.	Sale/Funds Received by the Estate	Asset Fully Administered (FA)/ Gross Value of Remaining Assets
1 Checking account	500.00	500.00		500.00	FA
2 123 Ocean View - rental prop.	100,000.00	63,000.00		90,000.00	FA
3 Accounts receivable Note 1	30,000.00	0.00		5,000.00	4,000.00
4 Household goods	2,000.00	0.00	DA		FA
5 Artwork	10,000.00	12,500.00		1,000.00	14,000.00
6 1999 Chevy van Notes 1,2	5,000.00	6,100.00		5,538.00	FA
7 Office equipment Note 1,2	5,000.00	3,600.00		2,462.00	FA
8 Ocean View rent receivable	500.00	500.00		500.00	FA
9 55 Lake Dr./ 1/2 int. homestead	37,500.00	7,125.00		50,000.00	FA
10 1998 Ford truck	8,000.00	0.00	OA		FA
11 ABC preference action Note 3	Unknown	5,000.00			2,000.00
12 Addtl Ocean View rents	Unknown	N/A		1,000.00	FA
13 Personal Injury Suit (u)	Unknown	Unknown			Unknown
14 1999 Chevy van Notes 1,2	20,000.00	20,000.00			20,000.00
15 Interest earned	Unknown	N/A		489.76	Unknown
TOTALS (Excluding unknown values)		118,325.00		156,489.76	Gross Value of Remaining Assets 40,000.00 (Total Dollar Amount in Column 6)

Note 1: \$10,000 National Bank lien encumbers assets 3, 6, and 7.
 Note 2: Assets #6 and #7 were sold together in bulk sale.

Note 3: Settlement negotiations are pending. Current value estimated at \$2,000.

Major activities affecting case closing:
 Portion of artwork sold to debtor for \$5,000 (payable \$1,000 mo., due 4/1/03 - 8/1/03);
 Have sent demand letter for delinquent payments. Payment is forthcoming.
 Meeting with special counsel on 8/2/03 concerning PI suit/target trial date: 1/04.
 Collect remaining accounts receivable.
 Settle preference action and adversary concerning fraudulent conveyance
 Public auction of remaining artwork set for 8/15/03

Initial Projected Date of Final Report (TFR): December 15, 2003 Current Projected Date of Final Report (TFR): June 30, 2004

FORM 2
CASH RECEIPTS AND DISBURSEMENTS RECORD

Trustee Name: [REDACTED]
 Bank Name: [REDACTED]
 Money Market Acct. #: [REDACTED]
 Blanket bond (per case limit): \$750,000
 Separate bond (if applicable):

Case No. [REDACTED]
 Case Name: [REDACTED]
 Taxpayer ID #: [REDACTED]
 For Period Ending: June 30, 2003

(Note: "xx" is used where a sub-code could apply.)

1 Transaction Date	2 Check or Ref. #	3 Paid to/Received From	4 Description of Transaction	5 Deposit \$	6 Disbursement \$	7 Money Mkt. Balance
12/10/02	1	[REDACTED]	Balance in debtor's checking account	500.00		500.00
12/15/02	8	[REDACTED]	November 2002 rent	500.00		1,000.00
12/31/02	15	[REDACTED]	December interest	1.25		1,001.25
01/02/03	3	[REDACTED]	Payment on account	1,300.00		2,301.25
01/15/03	12	[REDACTED]	December 2002 rent	500.00		2,801.25
01/23/03	3	[REDACTED]	Payment on account	700.00		3,501.25
01/31/03	15	[REDACTED]	January interest	5.50		3,506.75
02/15/03	12	[REDACTED]	January 2003 rent	500.00	1,000.00	4,006.75
02/15/03		[REDACTED]	Tf. to Savings #09-43-62			3,006.75
02/23/03	3	[REDACTED]	Payment on account	3,000.00		6,006.75
02/28/03	1001	[REDACTED]	Partial payment on lien against receivables		5,000.00	1,006.75
02/28/03	15	[REDACTED]	February interest	6.67		1,013.42
03/10/03	2	[REDACTED]	Sale of rental property per 3/1/03 court order.	52,800.00		53,813.42
			Gross sales price			53,813.42
			Less amounts paid through escrow:			53,813.42
			Lien			53,813.42
			Realtor's fee			53,813.42
			Property taxes (pre-petition)			53,813.42
			Property taxes (post-petition)			53,813.42
			Costs to sell			53,813.42
			Art work appraisal per 2/26/03 court order			53,813.42
03/31/03	1002	[REDACTED]	Purchase 60-day CD		1,000.00	52,813.42
03/31/03	15	[REDACTED]	March interest	50.00	40,000.00	12,813.42
03/31/03	5	[REDACTED]	1st pmt - artwork sale per 3/31/03 court order	1,000.00		12,863.42
04/12/03	5	[REDACTED]	NSF check	-1,000.00		13,863.42
04/20/03	5	[REDACTED]	Re-deposit Martin payment for artwork	1,000.00		12,863.42
04/22/03	5	[REDACTED]				13,863.42
SUBTOTALS				60,863.42	47,000.00	

FORM 12
CASH RECEIPTS AND DISBURSEMENTS RECORD

Case No. [REDACTED]
 Case Name: [REDACTED]
 Taxpayer ID #: [REDACTED]
 For Period Ending: June 30, 2003

Trustee Name: [REDACTED]
 Bank Name: [REDACTED]
 Money Market Acct. #: [REDACTED]
 Blanket bond (per case limit): \$750,000
 Separate bond (if applicable): [REDACTED]

(Note: "xx" is used where a sub-code could apply.)

1 Transaction Date	2 Check or Ref. #	3 Paid to/ Received From	4 Description of Transaction	5 Uniform Tran. Code	6 Deposit \$	7 Disbursement \$	8 Money Mkt Balance
04/25/03			Balance forward				13,863.42
04/30/03	15	[REDACTED]	Settlement of malpractice claim	1280-002	500,000.00		513,863.42
04/30/03		[REDACTED]	April interest	1270-000	23.00		513,886.42
04/30/03		[REDACTED]	April interest on amt. deposited in error	1280-002	137.00		514,023.42
05/01/03	1003	[REDACTED]	Transfer funds deposited to Sam Martin case in error	1280-002	-500,137.00		13,886.42
05/01/03	1004	[REDACTED]	Pro-ration of annual bond premium	2300-000		100.00	13,886.42
05/10/03	9	[REDACTED]	Sale of principal residence (1/2 interest)		35,500.00		13,786.42
			Gross proceeds (1/2)	1110-000			49,286.42
			Less: 1/2 lien	(10,000.00)			49,286.42
			1/2 realtor fee	(2,500.00)			49,286.42
			1/2 prop. taxes (pre-petition)	(275.00)			49,286.42
			1/2 prop. taxes (post-petition)	(925.00)			49,286.42
			1/2 closing costs	(800.00)			49,286.42
05/12/03	1005	[REDACTED]	Interim pmt/fraud tfr. action per 5/10/03 ct ord	3210-xx0		2,000.00	47,286.42
05/15/03	1006	[REDACTED]	State homestead exemption	8100-002		15,000.00	32,286.42
05/30/03	15	[REDACTED]	Additional amt out for CD	9999-000		20,000.00	12,286.42
06/17/03		[REDACTED]	May interest	1270-000	66.67		12,353.09
			Bulk auction sale of 1999 van (asset #6) and office equip. (asset #7) per 5/2/03 court order		8,000.00		20,353.09
			Allocation: Asset #6	1129-000			20,353.09
			Asset #7	1129-000			20,353.09
06/25/03	1007	[REDACTED]	Balance due on lien	4210-000		5,000.00	15,353.09
06/25/03	1008	[REDACTED]	Auction fees and expenses per 5/2/03 ct order			1,200.00	14,153.09
			Allocation: Auction fees	3610-000			14,153.09
			Auction exp.	3620-000			14,153.09
06/25/03	1009	[REDACTED]	Van exemption	8100-002		1,000.00	13,153.09
06/30/03		[REDACTED]	Tfr. to Savings #09-43-62	9999-000		10,000.00	3,153.09
06/30/03	15	[REDACTED]	June interest	1270-000	26.67		3,179.76
COLUMN TOTALS, PP. 1 AND 2					104,479.76	101,300.00	3,179.76
Less: Bank transfers/CDs						71,000.00	
Subtotal					104,479.76	30,300.00	
Less: Payments to debtors						16,000.00	
Net					104,479.76	14,300.00	

FORM 2
CASH RECEIPTS AND DISBURSEMENTS RECORD

Case No. [REDACTED]
 Case Name: [REDACTED]
 Taxpayer ID #: [REDACTED]
 For Period Ending: June 30, 2003

Trustee Name: [REDACTED]
 Bank Name: [REDACTED]
 Savings Acct. #: [REDACTED]
 Blanket bond (per case limit): \$750,000
 Separate bond (if applicable):

(Note: "xx" is used where a sub-code could apply.)

1	2	3	4	5	6	7	
Transaction Date	Check or Ref. #	Paid to/Received From	Description of Transaction	Uniform Tran. Code	Deposit \$	Disbursement \$	Savings Balance
02/15/03			Transfer from checking 01-16-18	9999-000	1,000.00		1,000.00
02/28/03	15	[REDACTED]	Interest	1270-000	2.00		1,002.00
03/31/03	15	[REDACTED]	Interest	1270-000	2.00		1,004.00
04/30/03	15	[REDACTED]	Interest	1270-000	2.00		1,006.00
05/30/03	15	[REDACTED]	Interest	1270-000	2.00		1,008.00
06/30/03	15	[REDACTED]	Interest	1270-000	2.00		1,010.00
06/30/03			Transfer from checking 01-16-18	9999-000	10,000.00		11,010.00

COLUMN TOTALS
 Less: Bank transfers/CDs 0.00
 Subtotal 11,010.00
 Less: Payments to debtors 10.00
 Net 11,000.00

FORM 2
CASH RECEIPTS AND DISBURSEMENTS RECORD

Case No. [REDACTED]
 Case Name: [REDACTED]
 Taxpayer ID #: [REDACTED]
 For Period Ending: June 30, 2003

Trustee Name: [REDACTED]
 Bank Name: [REDACTED]
 Initial CD #: [REDACTED]
 Blanket bond (per case limit): \$750,000
 Separate bond (if applicable):

(Note: "xx" is used where a sub-code could apply.)

1 Transaction Date	2 Check or Ref. #	3 Paid to/ Received From	4 Description of Transaction	5 Uniform Tran. Code	6 Deposit \$	7 Disbursement \$	8 C.D. Balance
03/31/03			Purchase 60-day CD from checking #01-16-18	9999-000	40,000.00		40,000.00
05/30/03	15	[REDACTED]	CD matured - interest earned	1270-000	300.00		40,300.00
05/30/03			Additional amount for CD from checking #01-16-18	9999-000	20,000.00		40,300.00
							60,300.00

COLUMN TOTALS
 Less: Bank transfers/CDs 0.00
 Subtotal 60,300.00
 Less: Payments to debtors 0.00
 Net 300.00

TOTAL - ALL ACCOUNTS

Checking [REDACTED]
 Savings [REDACTED]
 CD [REDACTED]

NET DEPOSITS/DISBURSEMENTS BALANCES

104,479.76 14,300.00 3,179.76
 10.00 0.00 11,010.00
 300.00 0.00 60,300.00
 104,789.76 14,300.00 74,489.76

FORM 3
SUMMARY INTERIM ASSET REPORT

Trustee: [REDACTED] Blanket bond amount: \$10,000,000.00
 For Period Ending: 6/30/03 Per case limit: \$750,000.00

1	2	3	4	5	6	7
Case No.	Case Name	Date filed (f) or converted (c) to chapter 7	Total funds on deposit or invested (from Form 2)	Amount of separate bond (if any)	Gross value of remaining assets (from Form 1 - excludes unknown values)	Date of Actual Disposition by*: Final Report (TFR) Final Account (TDR) Report of No Distribution (NDR) Conversion (C) Dismissal (D) Reassignment (R) *If TFR not filed, insert estimated (e) TFR date.
[REDACTED]	[REDACTED]	3/15/01 (c) 5/6/02 (f) 11/20/02(f) 1/3/03 (c) 3/13/03 (f) 4/10/03 (f)	1,500.00 -0- 74,489.76 -0- 506,683.00 850,000.00	1,000,000.00	-0- -0- 40,000.00 -0- 75,000.00 500,000.00	6/3/03 TFR 5/15/03 TDR 6/30/04 TFR (e) 6/25/03 NDR 12/31/04 TFR(e) 2/8/05 TFR (e)
TOTALS:			<u>1,432,672.76</u>		<u>615,000.00</u>	

I certify that I have filed and reviewed Forms 1 and 2 for all cases listed above and that they are accurate and correct to the best of my knowledge.

Trustee's signature: _____ Date signed: 7/23/03

SAMPLE COPY OF CPA AUDIT REPORT

This is a sample copy of the audit report that the CPA firms issue upon completion of a Chapter 7 panel trustee audit.

U.S. DEPARTMENT OF JUSTICE

**AUDIT
REPORT**

name
**CHAPTER 7 TRUSTEE
BANKRUPTCY ESTATE ADMINISTRATION**

**ANYTOWN, ANYSTATE
UST REGION __**

Date issued

Name
CHAPTER 7 TRUSTEE
BANKRUPTCY ESTATE ADMINISTRATION

INTRODUCTION

Audit firm, Certified Public Accountants, have completed an audit of the administrative and cash management procedures followed by chapter 7 trustee *name*. Our purpose was to assess the quality of the trustee's accounting for bankruptcy estate assets and related cash management practices and procedures. Our review focused on the trustee's most recent interim reporting period ending _____. The fieldwork was conducted on _____ by _____.

Scope and Methodology

The audit was performed under an agreement with the Executive Office for United States Trustees (EOUST), in accordance with its Statement of Work. The audit was conducted in accordance with government auditing standards for performance audits, except as noted below.

- The audit report is issued to the U.S. Trustee rather than to the auditee.
- The report contains no recommendations and is issued closed.
- Findings are limited to identification of criteria and conditions.

In our opinion, these departures from government auditing standards have no adverse effect on the audit results.

The scope of the audit generally encompassed a review of the trustee's: (1) asset administration and case progress review; (2) receipts and disbursements; (3) segregation of duties; (4) banking; and (5) computer operations and file maintenance. The audit did not include a review of the trustee's automated data processing system as a whole. However, computer generated data was compared to other independent sources. We also tested assets and transactions that occurred during the trustee's interim reporting period.

At the end of the latest interim reporting period, _____, the trustee reported a total of ___ asset cases; ___ cases had cash balances totaling \$ _____ and ___ cases did not have funds. The trustee's caseload was not confirmed with the Clerk of the Court. Therefore, we cannot provide assurance that all cases assigned to the trustee were accounted for in the interim report.

The cases selected for testing are listed in Appendix I. We contacted the Office of the United States Trustee on January X, 200X. All information provided by the Office was considered in planning the work to be performed during the audit.

Background

Name has served as a trustee under the U.S. Trustee program since _____. [He] OR [she] [is] OR [is not] currently on the U.S. Trustee’s active rotation for receiving new chapter 7 cases. At the time of our review, the trustee was conducting his/her bankruptcy-related duties from his/her [law office] OR [business office] located at _____.

Trustee name’s administration of bankruptcy estates was previously audited in ____ by [the Department of Justice’s Office of the Inspector General] OR [an independent CPA firm]. In addition, the U.S. Trustee previously reviewed the trustee’s administration of bankruptcy estates and issued its UST Field Examination Report dated _____. [The findings previously reported did not recur in the current audit.] OR [Previously reported weaknesses were found again in the current audit. These findings are so identified in the main body of the report.]

AUDIT RESULTS

In our opinion, the trustee’s accounting and cash management practices and procedures were **adequate** for the safeguarding of bankruptcy estate funds in accordance with the Handbook for Chapter 7 Trustees, **except for:**

- _____
- _____
- _____

Our opinion is based on the transactions tested. Our audit was more limited than would be necessary to express an opinion of the trustee’s bankruptcy operations as a whole. However, aside from the preceding, nothing came to our attention for the transactions not tested to indicate that the trustee’s accounting and cash management practices were not adequate. The items listed above and other findings are discussed in the following sections of this report and are listed in Appendix IV.

Asset Administration and Case Progress Review

We reviewed the assets and cases listed on Appendix I and found that the trustee’s asset administration and case progress review procedures were in compliance with the Handbook for Chapter 7 Trustees.

or

We reviewed the assets and cases listed on Appendix I and found that the trustee’s asset administration and case progress review procedures were generally in compliance with the Handbook for Chapter 7 Trustees, except for the following:

1. The trustee's system for reviewing case progress did not indicate the date of the trustee's review (Handbook page 8-42). While we were able to determine that the trustee was periodically reviewing case progress, we could not determine that the review was performed at least quarterly. The trustee stated that he will document his timely performance of the case progress review in the future.
2. In case XX-XXXXX (_____), we noted that the trustee failed to actively pursue collections for an account receivable in the amount of \$_____ (Handbook pages 8-10, 9-18 to 9-19). Per discussion with the trustee, he/she believes that the account receivable is collectible. However, a demand letter was not sent as of the date of fieldwork; the case was filed on _____. The trustee explained that he/she plans to file suit _____; however, he/she acknowledged that a letter should have been sent shortly after he/she was named trustee to the case.
3. In case XX-XXXX (_____), the following assets listed on the petition were not recorded on Form 1: cash, office equipment and furnishings, and inventory (Handbook pages 9-9, Forms-3 to 4). This type of weakness was reported in the prior UST Field Examination. The trustee made the corrections and provided a new Form 1 during our field work.

Receipts and Disbursements

We reviewed ____ receipts and ____ disbursements and found that the related internal control, record keeping, and financial reporting requirements were in compliance with the Handbook for Chapter 7 Trustees.

or

We reviewed ____ receipts and ____ disbursements and found that the related internal control, record keeping, and financial reporting requirements were in compliance with the Handbook for Chapter 7 Trustees, except for the following:

4. In case XX-XXXXX (_____), the auctioneer remitted funds net of the auctioneer commission without court order (Handbook page 8-27). The trustee advised that this was the first time the trustee used this auctioneer and will advise the auctioneer that this practice can only be used if specifically authorized by court order.
5. In case XX-XXXXX (_____), a November 21, 2004 receipt in the amount of \$10,000 for the settlement of a fraudulent conveyance action did not appear on Form 1. Additionally, no asset reference number and no Uniform Transaction Code were recorded for this receipt on Form 2. The correct asset reference number is #15. The correct UTC is 1241-000. (Handbook pages Forms-6 and Forms-9). The trustee acknowledged the finding.

6. Four of the ____ receipts reviewed were not recorded on the receipts log. This type of weakness was reported in the prior UST Field Examination. (Handbook page 9-1).
- | | | | | | |
|----------|--------|---------|----------|--------|---------|
| XX-XXXX1 | MMDDYY | \$_____ | XX-XXXX2 | MMDDYY | \$_____ |
| XX-XXXX3 | MMDDYY | \$_____ | XX-XXXX4 | MMDDYY | \$_____ |

These receipts were received directly by the trustee at § 341(a) meetings and did not come through the mail. The trustee agreed that these receipts should have been included on the receipts log.

Segregation of Duties

We reviewed the segregation of duties within the trustee's office, including the matrix provided by the trustee (and reproduced herein at Appendix II), and found that the trustee operation was in compliance with the requirements set forth in the Handbook for Chapter 7 Trustees.

or

We reviewed the segregation of duties within the trustee's office, including the matrix provided by the trustee (and reproduced herein at Appendix II), and found that the trustee operation was in compliance with the requirements set forth in the Handbook for Chapter 7 Trustees, except for the following:

7. Trustee Assistant #1 performed some of the duties that the trustee is required to perform per the Handbook at page 9-13. Specifically, the assistant opened the bank statements and reviewed the statements and canceled checks for unusual items before giving them to the trustee to review. In addition, the assistant was responsible for setting up passwords and changing security access controls for the trustee's computerized case management system. The trustee said he/she was not aware that these functions must be personally performed by the trustee.

Banking

The trustee's internal controls and procedures relating to bank accounts were in compliance with the Handbook for Chapter 7 Trustees.

or

The trustee's internal controls and procedures relating to bank accounts were in compliance with the Handbook for Chapter 7 Trustees, except for the following:

8. In case XX-XXXXX (_____), funds totaling \$96,000 have been on deposit in a savings account for 18 months (Handbook page 9-3). The trustee should have considered higher yielding investments. During fieldwork, the funds were invested in a certificate of deposit.
9. In case XX-XXXXX (_____), we noted that the December 31, 2004, bank reconciliation omitted a significant reconciling item. The \$750 item cleared the bank but was not recorded on Form 2. (Handbook pages 9-10, 9-14, and Forms-8). The trustee

said he/she would investigate and make the appropriate corrections. Further, the trustee said that he/she would ensure that all reconciliations were complete in the future.

Computer Operations and File Maintenance

Computer operations and file maintenance were in compliance with the requirements stated in the Handbook for Chapter 7 Trustees. Access to, and use of, the _____ software is controlled according to the computer access matrix at Appendix III.

or

Computer operations and file maintenance were generally in compliance with the requirements stated in the Handbook for Chapter 7 Trustees, except for the following:

10. We noted that the trustee did not develop or maintain a comprehensive written disaster recovery plan for estate financial and administrative records and for the computer system data (Handbook page 9-23). The trustee explained that there are ways to recover the records; however, the procedures are not documented. The trustee is currently in the process of writing a plan.
11. The Chapter 7 computer records were not backed-up daily (Handbook page 9-21). The computer records were backed-up weekly and a copy was stored off-site.

Access to, and use of, the _____ software is controlled according to the computer access list in Appendix III. However, as previously noted, the ability to set up and change passwords and other access controls is not limited to the trustee. See Finding # 7.

Views of Responsible Officials

During our audit and particularly at the exit conference, we solicited the comments of the trustee. His/her comments have been incorporated into the appropriate sections in the body of the report.

CASE AND ASSET SAMPLES

The following cases and assets/dispositions were reviewed:

	Case Number	Case Name	Asset/Disposition
1.	XX-XXXXXX	Any Name	Preference Claim/Settlement
2.	XX-XXXXXX	Any Name	Real Estate/Auction To be Held
3.	XX-XXXXXX	Any Name	Accounts Receivable/Fully Collected
4.	XX-XXXXXX	Any Name	Real Estate/Abandoned
5.	XX-XXXXXX	Any Name	Tax Refund/To Be Collected
6.	XX-XXXXXX	Any Name	Furnishings & Fixtures/Abandoned
7.	XX-XXXXXX	Any Name	Automobile/Held For Sale
8.	XX-XXXXXX	Any Name	Rents/Collection
9.	XX-XXXXXX	Any Name	Fraudulent Conveyance/Under Investigation
10.	XX-XXXXXX	Any Name	Collectibles/Auction Held
11.	XX-XXXXXX	Any Name	Accounts Receivable/Partially Collected
12.	XX-XXXXXX	Any Name	Inventory/Under Investigation
13.	XX-XXXXXX	Any Name	Personal Injury Action/Awaiting Settlement
14.	XX-XXXXXX	Any Name	Investment in Private Company Stock/Under Investigation
15.	XX-XXXXXX	Any Name	Bank Account/Fully Collected

SEGREGATION OF DUTIES MATRIX

	Duties	Responsible Persons				Remarks
		Initials:	Trustee			
a	Receives mail					
b	Opens mail					
c	Endorses checks for deposit only					
d	Records receipts in receipts log					
e	Posts receipts to Form 2					
f	Prepares deposits					
g	Mails or makes deposits at bank					
h	Compares, on test basis, receipts log to bank statements*					
i	Prepares disbursements					
j	Posts disbursements to Form 2					
k	Reviews supporting documents*					
l	Authorizes disbursements*					
m	Has custody of blank check stock					
n	Signs checks*					
o	Mails checks					
p	Receives unopened bank statements*					
q	Reviews bank statements*					
r	Opens bank accounts					
s	Closes bank accounts					
t	Authorizes bank fund transfers					
u	Arranges for stop payment orders on checks outstanding over 90 days					
v	Authorizes stop payment orders*					
w	Verifies payee information on stop payment; promptly re-issues the check					
	Reconciles bank statements to:					
x	- Form 2					
y	- Receipts log					
z	Reviews bank reconciliations*					
aa	Prepares Forms 1, 2, & 3					
bb	Accesses ADP system					

COMPUTER ACCESS MATRIX

	User ID	User Name	Remarks
1.			
2.			
3.			
4.			
5.			
6.			

		User's Access Rating						
		1	2	3	4	5	6	Remarks
	Rating; Y= Yes N= No							
a.	Security maintenance							
b.	Deactivate/reactivate cases							
c.	Purge/archive cases							
d.	Print checks							
	Rating; I = Inquiry only C = Change, add and/or delete							
e.	Assets							
f.	Claims							
g.	Checks							
h.	Deposits							
i.	Transfers							
j.	Adjustments							

LIST OF AUDIT FINDINGS

The trustee's system for reviewing case progress did not indicate the date of the trustee's review (Handbook page 8-42).

In case XX-XXXXX (_____), we noted that the trustee failed to actively pursue collections for an account receivable in the amount of \$_____ (Handbook pages 8-10, 9-18 to 9-19).

In case XX-XXXX (_____), the following assets listed on the petition were not recorded on Form 1: cash, office equipment and furnishings, and inventory (Handbook pages 9-9, Forms-3 to 4). This type of weakness was reported in the prior UST Field Examination.

In case XX-XXXXX (_____), the auctioneer remitted funds net of the auctioneer commission without court order (Handbook page 8-27).

In case XX-XXXXX (_____), a November 21, 2004 receipt in the amount of \$10,000 for the settlement of a fraudulent conveyance action did not appear on Form 1. Additionally, no asset reference number and no Uniform Transaction Code were recorded for this receipt on Form 2. The correct asset reference number is #15. The correct UTC is 1241-000. (Handbook pages Forms-6 and Forms-9).

Four of the ____ receipts reviewed were not recorded on the receipts log (Handbook page 9-1). This type of weakness was reported in the prior UST Field Examination.

Trustee Assistant #1 performed some of the duties that the trustee is required to perform per the Handbook at 9-13.

In case XX-XXXXX (_____), funds totaling \$96,000 have been on deposit in a savings account for 18 months (Handbook page 9-3).

In case XX-XXXXX (_____), we noted that the December 31, 2004, bank reconciliation omitted a significant reconciling item. The \$750 item cleared the bank but was not recorded on Form 2. (Handbook pages 9-10, 9-14, Forms-8)

We noted that the trustee did not develop or maintain a comprehensive written disaster recovery plan for estate financial and administrative records and for the computer system data (Handbook page 9-23).

The Chapter 7 computer records were not backed-up daily (Handbook page 9-21).

EXAMPLES OF CONSEQUENTIAL DEFICIENCIES

United States Trustee Program
 Audit of Chapter 7 Panel Trustees
 Examples of Consequential Deficiencies

Banking

1. Commingled funds
2. Unauthorized depository
3. Missing bank statements
4. Missing canceled checks
5. Case funds not invested appropriately
6. Inability to perform an accounting "proof of cash"
7. Improper or unauthorized bank account transfers or unexplained transactions on bank statements
8. Incomplete or missing bank reconciliations

Receipts

1. Incoming checks not restrictively endorsed upon receipt
2. Receipts log not maintained
3. Receipts not deposited, or deposited untimely
4. Sales/liquidations without notice or court order
5. No supporting documentation

Recordkeeping

1. Non-existent reports
2. Asset or disposition of asset omitted from the Form 1
3. Financial transaction omitted from the Form 2
4. Inaccurate information on the Form 2

ADP System

1. Passwords not utilized or changed
2. ADP system not adequately protected
3. No routine back up procedures

Disbursements

1. Disbursement without court authorization
2. No supporting documentation
3. Checks not pre-numbered
4. Blank checks not adequately controlled
5. Unauthorized disbursements by cashier's check or wire transfer
6. Blank checks pre-signed by trustee
7. Checks altered or contain unusual endorsement
8. Checks written to cash

Asset Administration

1. Assets not tracked on Form 1
2. Assets not timely investigated to determine value to the estate
3. Case assets not promptly inventoried, secured, or collected
4. Untimely asset liquidations
5. Assets overlooked, lost stolen, or not adequately accounted for
6. Trustee does not adequately supervise auctioneer, liquidator, collection agent, attorney, or other person hired to collect or liquidate assets
7. Assets sold to insiders or related parties
8. No system to monitor case progress on a quarterly basis

Other Internal Controls

1. Trustee does not adequately supervise employees
2. Case files are disorganized
3. Case files are missing

APPENDIX VIII

ANALYSIS OF OVERDUE UST FIELD EXAMINATIONS

Panel Trustee	Year of Last Audit (A) or Field Exam (FE)	FY Field Exam Was Due	FY of Actual Field Exam	Years Overdue
Region 1				
Panel Trustee 1	2002 (A)	2006	2007	1
Region 2				
Panel Trustee 2	2000 (A)	2004	2006	2
Panel Trustee 3	2002 (A)	2006	2007	1
Panel Trustee 4	2000 (A)	2004	2005	1
Panel Trustee 5	2002 (A)	2006	None	2
Panel Trustee 6	2002 (A)	2006	2007	1
Panel Trustee 7	2000 (A)	2004	2007	3
Panel Trustee 8	2002 (A)	2006	None	2
Panel Trustee 9	2000 (A)	2004	2005	1
Panel Trustee 10	2001	2005	2007	2
Panel Trustee 11	2000 (A)	2004	2006	2
Panel Trustee 12	1999 (A)	2003	2006	3
Panel Trustee 13	2002 (A)	2006	2007	1
Panel Trustee 14	2000 (A)	2004	2005	1
Panel Trustee 15	1999 (A)	2003	2005	2
Panel Trustee 16	1999 (A)	2003	2006	3
Panel Trustee 17	1999 (A)	2003	2005	2
Panel Trustee 18	1998 (A)	2002	2006	4
Panel Trustee 19	2000 (A)	2004	2006	2
Panel Trustee 20	2001 (A)	2005	2007	2
Region 3				
Panel Trustee 21	2001 (A)	2005	2007	2
Panel Trustee 22	2002 (A)	2006	None	2
Panel Trustee 23	2001 (A)	2005	2006	1
Panel Trustee 24	1999 (A)	2003	2006	3
Panel Trustee 25	2000 (A)	2004	2006	2
Panel Trustee 26	2000 (A)	2004	2006	2
Panel Trustee 27	2000 (A)	2004	2007	3
Panel Trustee 28	1999 (A)	2003	2006	3

Panel Trustee	Year of Last Audit (A) or Field Exam (FE)	FY Field Exam Was Due	FY of Actual Field Exam	Years Overdue
Panel Trustee 29	2000 (A)	2004	2006	2
Panel Trustee 30	2000 (A)	2004	2007	3
Panel Trustee 31	2000 (A)	2004	2007	3
Panel Trustee 32	appt 2/02	2006	2007	1
Panel Trustee 33	2000 (A)	2004	2007	3
Panel Trustee 34	2001 (A)	2005	2007	2
Panel Trustee 35	2000 (A)	2004	2007	3
Panel Trustee 36	2000 (A)	2004	2005	1
Panel Trustee 37	2000 (A)	2004	2006	2
Panel Trustee 38	2001 (A)	2005	2006	1
Panel Trustee 39	2001 (A)	2005	2006	1
Panel Trustee 40	1999 (A)	2003	2007	4
Region 5				
Panel Trustee 41	2000 (A)	2004	2006	2
Panel Trustee 42	2000 (A)	2004	2005	1
Region 6				
Panel Trustee 43	2000 (A)	2004	2005	1
Panel Trustee 44	2001 (A)	2005	2007	2
Panel Trustee 45	1999 (A)	2003	2006	3
Panel Trustee 46	2001 (A)	2005	2007	2
Panel Trustee 47	2001 (A)	2005	None	3
Region 7				
Panel Trustee 48	2000 (A)	2004	2005	1
Panel Trustee 49	2000 (A)	2004	2005	1
Panel Trustee 50	2000 (A)	2004	2005	1
Panel Trustee 51	2001 (A)	2005	2006	1
Region 8				
Panel Trustee 52	2000 (A)	2004	2005	1
Region 9				
Panel Trustee 53	1999 (A)	2003	2004	1
Panel Trustee 54	2001 (A)	2005	2007	2
Panel Trustee 55	1997 (A)	2001	2005	4

Panel Trustee	Year of Last Audit (A) or Field Exam (FE)	FY Field Exam Was Due	FY of Actual Field Exam	Years Overdue
Panel Trustee 56	2002 (A)	2006	2007	1
Panel Trustee 57	2002 (A)	2006	None	2
Panel Trustee 58	2001 (A)	2005	2007	2
Panel Trustee 59	2002 (A)	2006	None	2
Panel Trustee 60	2002 (A)	2006	2007	1
Panel Trustee 61	2001 (A)	2005	2006	1
Panel Trustee 62	2001 (A)	2005	2007	2
Panel Trustee 63	2002 (A)	2006	2007	1
Panel Trustee 64	2002 (A)	2006	2007	1
Panel Trustee 65	2001 (A)	2005	2006	1
Panel Trustee 66	appt 1998	2002	2006	4
Panel Trustee 67	2002 (FE)	2006	2007	1
Panel Trustee 68	2001 (A)	2005	2006	1
Panel Trustee 69	2002 (A)	2006	None	2
Region 10				
Panel Trustee 70	2001(A)	2005	2006	1
Panel Trustee 71	2002 (A)	2006	None	2
Panel Trustee 72	2002 (FE)	2006	2007	1
Panel Trustee 73	2002 (A)	2006	2007	1
Panel Trustee 74	2002 (A)	2006	None	2
Panel Trustee 75	2001 (A)	2005	2006	1
Panel Trustee 76	2002 (A)	2006	2008	2
Panel Trustee 77	2001 (A)	2005	2006	1
Region 11				
Panel Trustee 78	2002 (A)	2006	2007	1
Panel Trustee 79	2001 (A)	2005	2007	2
Region 13				
Panel Trustee 80	2002 (A)	2006	2007	1
Panel Trustee 81	2001 (A)	2005	2006	1
Region 14				
Panel Trustee 82	2002 (A)	2006	None	2

Panel Trustee	Year of Last Audit (A) or Field Exam (FE)	FY Field Exam Was Due	FY of Actual Field Exam	Years Overdue
Region 16				
Panel Trustee 83	1999 (A)	2003	2005	2
Panel Trustee 84	2001 (A)	2005	2006	1
Panel Trustee 85	2001 (A)	2005	2006	1
Region 17				
Panel Trustee 86	1999 (A)	2003	2005	2
Panel Trustee 87	2000 (A)	2004	2005	1
Panel Trustee 88	2001 (A)	2005	2006	1
Panel Trustee 89	2002 (FE)	2006	2007	1
Panel Trustee 90	1999 (A)	2003	2006	3
Panel Trustee 91	2000 (A)	2004	2006	2
Panel Trustee 92	2000 (A)	2004	2006	2
Panel Trustee 93	2002 (A)	2006	2007	1
Panel Trustee 94	2000 (A)	2004	2007	3
Panel Trustee 95	2002 (A)	2006	2007	1
Region 18				
Panel Trustee 96	2000	2004	2005	1
Region 19				
Panel Trustee 97	2001 (A)	2005	2006	1
Panel Trustee 98	2001 (A)	2005	2006	1
Panel Trustee 99	2000 (A)	2004	2005	1
Panel Trustee 100	2002 (A)	2006	2007	1
Region 20				
Panel Trustee 101	1999 (A)	2003	2006	3
Panel Trustee 102	appt 9/01/01	2005	None	3
Panel Trustee 103	2000	2004	2005	1
Panel Trustee 104	2002 (A)	2006	2007	1
Panel Trustee 105	2000 (A)	2004	None	4
Panel Trustee 106	1998 (A)	2002	2006	4
Panel Trustee 107	2000 (A)	2004	2007	3

Panel Trustee	Year of Last Audit (A) or Field Exam (FE)	FY Field Exam Was Due	FY of Actual Field Exam	Years Overdue
Region 21				
Panel Trustee 108	2000	2004	2005	1
Panel Trustee 109	2000	2004	2005	1
Panel Trustee 110	2000 (A)	2004	2005	1
Panel Trustee 111	2000	2004	2005	1

Source: OIG analysis of EOUST data

Official Form 22A (Chapter 7) (04/07)

In re _____
Debtor(s)

Case Number: _____
(If known)

According to the calculations required by this statement:
 The presumption arises.
 The presumption does not arise.
 (Check the box as directed in Parts I, III, and VI of this statement.)

CHAPTER 7 STATEMENT OF CURRENT MONTHLY INCOME AND MEANS-TEST CALCULATION

In addition to Schedule I and J, this statement must be completed by every individual Chapter 7 debtor, whether or not filing jointly, whose debts are primarily consumer debts. Joint debtors may complete one statement only.

Part I. EXCLUSION FOR DISABLED VETERANS	
1	<p>If you are a disabled veteran described in the Veteran's Declaration in this Part I, (1) check the box at the beginning of the Veteran's Declaration, (2) check the box for "The presumption does not arise" at the top of this statement, and (3) complete the verification in Part VIII. Do not complete any of the remaining parts of this statement.</p> <p><input type="checkbox"/> Veteran's Declaration. By checking this box, I declare under penalty of perjury that I am a disabled veteran (as defined in 38 U.S.C. § 3741(1)) whose indebtedness occurred primarily during a period in which I was on active duty (as defined in 10 U.S.C. § 101(d)(1)) or while I was performing a homeland defense activity (as defined in 32 U.S.C. §901(1)).</p>

Part II. CALCULATION OF MONTHLY INCOME FOR § 707(b)(7) EXCLUSION												
2	<p>Marital/filing status. Check the box that applies and complete the balance of this part of this statement as directed.</p> <p>a. <input type="checkbox"/> Unmarried. Complete only Column A ("Debtor's Income") for Lines 3-11.</p> <p>b. <input type="checkbox"/> Married, not filing jointly, with declaration of separate households. By checking this box, debtor declares under penalty of perjury: "My spouse and I are legally separated under applicable non-bankruptcy law or my spouse and I are living apart other than for the purpose of evading the requirements of § 707(b)(2)(A) of the Bankruptcy Code." Complete only Column A ("Debtor's Income") for Lines 3-11.</p> <p>c. <input type="checkbox"/> Married, not filing jointly, without the declaration of separate households set out in Line 2.b above. Complete both Column A ("Debtor's Income") and Column B (Spouse's Income) for Lines 3-11.</p> <p>d. <input type="checkbox"/> Married, filing jointly. Complete both Column A ("Debtor's Income") and Column B ("Spouse's Income") for Lines 3-11.</p> <p>All figures must reflect average monthly income received from all sources, derived during the six calendar months prior to filing the bankruptcy case, ending on the last day of the month before the filing. If the amount of monthly income varied during the six months, you must divide the six-month total by six, and enter the result on the appropriate line.</p>											
3	Gross wages, salary, tips, bonuses, overtime, commissions.	\$	\$									
4	<p>Income from the operation of a business, profession or farm. Subtract Line b from Line a and enter the difference in the appropriate column(s) of Line 4. Do not enter a number less than zero. Do not include any part of the business expenses entered Line b as a deduction in Part V.</p> <table border="1" style="width: 100%;"> <tr> <td style="width: 5%;">a.</td> <td style="width: 75%;">Gross receipts</td> <td style="width: 20%;">\$</td> </tr> <tr> <td>b.</td> <td>Ordinary and necessary business expenses</td> <td>\$</td> </tr> <tr> <td>c.</td> <td>Business income</td> <td>Subtract Line b from Line a</td> </tr> </table>			a.	Gross receipts	\$	b.	Ordinary and necessary business expenses	\$	c.	Business income	Subtract Line b from Line a
a.	Gross receipts	\$										
b.	Ordinary and necessary business expenses	\$										
c.	Business income	Subtract Line b from Line a										
5	<p>Rent and other real property income. Subtract Line b from Line a and enter the difference in the appropriate column(s) of Line 5. Do not enter a number less than zero. Do not include any part of the operating expenses entered on Line b as a deduction in Part V.</p> <table border="1" style="width: 100%;"> <tr> <td style="width: 5%;">a.</td> <td style="width: 75%;">Gross receipts</td> <td style="width: 20%;">\$</td> </tr> <tr> <td>b.</td> <td>Ordinary and necessary operating expenses</td> <td>\$</td> </tr> <tr> <td>c.</td> <td>Rent and other real property income</td> <td>Subtract Line b from Line a</td> </tr> </table>			a.	Gross receipts	\$	b.	Ordinary and necessary operating expenses	\$	c.	Rent and other real property income	Subtract Line b from Line a
a.	Gross receipts	\$										
b.	Ordinary and necessary operating expenses	\$										
c.	Rent and other real property income	Subtract Line b from Line a										
6	Interest, dividends and royalties.	\$	\$									
7	Pension and retirement income.	\$	\$									
8	Any amounts paid by another person or entity, on a regular basis, for the household expenses of the debtor or the debtor's dependents, including child or spousal support. Do not include amounts paid by the debtor's spouse if Column B is completed.	\$	\$									

9	Unemployment compensation. Enter the amount in the appropriate column(s) of Line 9. However, if you contend that unemployment compensation received by you or your spouse was a benefit under the Social Security Act, do not list the amount of such compensation in Column A or B, but instead state the amount in the space below:			
	Unemployment compensation claimed to be a benefit under the Social Security Act	Debtor \$ _____ Spouse \$ _____	\$	\$
10	Income from all other sources. If necessary, list additional sources on a separate page. Do not include any benefits received under the Social Security Act or payments received as a victim of a war crime, crime against humanity, or as a victim of international or domestic terrorism. Specify source and amount.			
	a.	\$		
	b.	\$		
Total and enter on Line 10			\$	\$
11	Subtotal of Current Monthly Income for § 707(b)(7). Add Lines 3 thru 10 in Column A, and, if Column B is completed, add Lines 3 through 10 in Column B. Enter the total(s).		\$	\$
12	Total Current Monthly Income for § 707(b)(7). If Column B has been completed, add Line 11, Column A to Line 11, Column B, and enter the total. If Column B has not been completed, enter the amount from Line 11, Column A.		\$	

Part III. APPLICATION OF § 707(b)(7) EXCLUSION				
13	Annualized Current Monthly Income for § 707(b)(7). Multiply the amount from Line 12 by the number 12 and enter the result.		\$	
14	Applicable median family income. Enter the median family income for the applicable state and household size. (This information is available by family size at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.)			
	a. Enter debtor's state of residence: _____	b. Enter debtor's household size: _____	\$	
15	Application of Section 707(b)(7). Check the applicable box and proceed as directed.			
	<input type="checkbox"/> The amount on Line 13 is less than or equal to the amount on Line 14. Check the box for "The presumption does not arise" at the top of page 1 of this statement, and complete Part VIII; do not complete Parts IV, V, VI or VII. <input type="checkbox"/> The amount on Line 13 is more than the amount on Line 14. Complete the remaining parts of this statement.			

Complete Parts IV, V, VI, and VII of this statement only if required. (See Line 15.)

Part IV. CALCULATION OF CURRENT MONTHLY INCOME FOR § 707(b)(2)				
16	Enter the amount from Line 12.		\$	
17	Marital adjustment. If you checked the box at Line 2.c, enter the amount of the income listed in Line 11, Column B that was NOT paid on a regular basis for the household expenses of the debtor or the debtor's dependents. If you did not check box at Line 2.c, enter zero.		\$	
18	Current monthly income for § 707(b)(2). Subtract Line 17 from Line 16 and enter the result.		\$	

Part V. CALCULATION OF DEDUCTIONS ALLOWED UNDER § 707(b)(2)				
Subpart A: Deductions under Standards of the Internal Revenue Service (IRS)				
19	National Standards: food, clothing, household supplies, personal care, and miscellaneous. Enter "Total" amount from IRS National Standards for Allowable Living Expenses for the applicable family size and income level. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.)		\$	
20A	Local Standards: housing and utilities; non-mortgage expenses. Enter the amount of the IRS Housing and Utilities Standards; non-mortgage expenses for the applicable county and family size. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.)		\$	

Official Form 22A (Chapter 7) (04/07) – Cont.

3

20B	<p>Local Standards: housing and utilities; mortgage/rent expense. Enter, in Line a below, the amount of the IRS Housing and Utilities Standards; mortgage/rent expense for your county and family size (this information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court); enter on Line b the total of the Average Monthly Payments for any debts secured by your home, as stated in Line 42; subtract Line b from Line a and enter the result in Line 20B. Do not enter an amount less than zero.</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 5%; text-align: center;">a.</td> <td style="width: 60%;">IRS Housing and Utilities Standards; mortgage/rental expense</td> <td style="width: 35%;">\$</td> </tr> <tr> <td style="text-align: center;">b.</td> <td>Average Monthly Payment for any debts secured by your home, if any, as stated in Line 42</td> <td>\$</td> </tr> <tr> <td style="text-align: center;">c.</td> <td>Net mortgage/rental expense</td> <td>Subtract Line b from Line a.</td> </tr> </table>	a.	IRS Housing and Utilities Standards; mortgage/rental expense	\$	b.	Average Monthly Payment for any debts secured by your home, if any, as stated in Line 42	\$	c.	Net mortgage/rental expense	Subtract Line b from Line a.	\$
a.	IRS Housing and Utilities Standards; mortgage/rental expense	\$									
b.	Average Monthly Payment for any debts secured by your home, if any, as stated in Line 42	\$									
c.	Net mortgage/rental expense	Subtract Line b from Line a.									
21	<p>Local Standards: housing and utilities; adjustment. if you contend that the process set out in Lines 20A and 20B does not accurately compute the allowance to which you are entitled under the IRS Housing and Utilities Standards, enter any additional amount to which you contend you are entitled, and state the basis for your contention in the space below:</p> <hr/> <hr/> <hr/>	\$									
22	<p>Local Standards: transportation; vehicle operation/public transportation expense. You are entitled to an expense allowance in this category regardless of whether you pay the expenses of operating a vehicle and regardless of whether you use public transportation.</p> <p>Check the number of vehicles for which you pay the operating expenses or for which the operating expenses are included as a contribution to your household expenses in Line 8. <input type="checkbox"/> 0 <input type="checkbox"/> 1 <input type="checkbox"/> 2 or more.</p> <p>Enter the amount from IRS Transportation Standards, Operating Costs & Public Transportation Costs for the applicable number of vehicles in the applicable Metropolitan Statistical Area or Census Region. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.)</p>	\$									
23	<p>Local Standards: transportation ownership/lease expense; Vehicle 1. Check the number of vehicles for which you claim an ownership/lease expense. (You may not claim an ownership/lease expense for more than two vehicles.) <input type="checkbox"/> 1 <input type="checkbox"/> 2 or more.</p> <p>Enter, in Line a below, the amount of the IRS Transportation Standards, Ownership Costs, First Car (available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court); enter in Line b the total of the Average Monthly Payments for any debts secured by Vehicle 1, as stated in Line 42; subtract Line b from Line a and enter the result in Line 23. Do not enter an amount less than zero.</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 5%; text-align: center;">a.</td> <td style="width: 60%;">IRS Transportation Standards, Ownership Costs, First Car</td> <td style="width: 35%;">\$</td> </tr> <tr> <td style="text-align: center;">b.</td> <td>Average Monthly Payment for any debts secured by Vehicle 1, as stated in Line 42</td> <td>\$</td> </tr> <tr> <td style="text-align: center;">c.</td> <td>Net ownership/lease expense for Vehicle 1</td> <td>Subtract Line b from Line a.</td> </tr> </table>	a.	IRS Transportation Standards, Ownership Costs, First Car	\$	b.	Average Monthly Payment for any debts secured by Vehicle 1, as stated in Line 42	\$	c.	Net ownership/lease expense for Vehicle 1	Subtract Line b from Line a.	\$
a.	IRS Transportation Standards, Ownership Costs, First Car	\$									
b.	Average Monthly Payment for any debts secured by Vehicle 1, as stated in Line 42	\$									
c.	Net ownership/lease expense for Vehicle 1	Subtract Line b from Line a.									
24	<p>Local Standards: transportation ownership/lease expense; Vehicle 2. Complete this Line only if you checked the "2 or more" Box in Line 23.</p> <p>Enter, in Line a below, the amount of the IRS Transportation Standards, Ownership Costs, Second Car (available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court); enter in Line b the total of the Average Monthly Payments for any debts secured by Vehicle 2, as stated in Line 42; subtract Line b from Line a and enter the result in Line 24. Do not enter an amount less than zero.</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 5%; text-align: center;">a.</td> <td style="width: 60%;">IRS Transportation Standards, Ownership Costs, Second Car</td> <td style="width: 35%;">\$</td> </tr> <tr> <td style="text-align: center;">b.</td> <td>Average Monthly Payment for any debts secured by Vehicle 2, as stated in Line 42</td> <td>\$</td> </tr> <tr> <td style="text-align: center;">c.</td> <td>Net ownership/lease expense for Vehicle 2</td> <td>Subtract Line b from Line a.</td> </tr> </table>	a.	IRS Transportation Standards, Ownership Costs, Second Car	\$	b.	Average Monthly Payment for any debts secured by Vehicle 2, as stated in Line 42	\$	c.	Net ownership/lease expense for Vehicle 2	Subtract Line b from Line a.	\$
a.	IRS Transportation Standards, Ownership Costs, Second Car	\$									
b.	Average Monthly Payment for any debts secured by Vehicle 2, as stated in Line 42	\$									
c.	Net ownership/lease expense for Vehicle 2	Subtract Line b from Line a.									
25	<p>Other Necessary Expenses: taxes. Enter the total average monthly expense that you actually incur for all federal, state and local taxes, other than real estate and sales taxes, such as income taxes, self employment taxes, social security taxes, and Medicare taxes. Do not include real estate or sales taxes.</p>	\$									
26	<p>Other Necessary Expenses: mandatory payroll deductions. Enter the total average monthly payroll deductions that are required for your employment, such as mandatory retirement contributions, union dues, and uniform costs. Do not include discretionary amounts, such as non-mandatory 401(k) contributions.</p>	\$									

Official Form 22A (Chapter 7) (04/07) – Cont.

4

27	Other Necessary Expenses: life insurance. Enter average monthly premiums that you actually pay for term life insurance for yourself. Do not include premiums for insurance on your dependents, for whole life or for any other form of insurance.	\$
28	Other Necessary Expenses: court-ordered payments. Enter the total monthly amount that you are required to pay pursuant to court order, such as spousal or child support payments. Do not include payments on past due support obligations included in Line 44.	\$
29	Other Necessary Expenses: education for employment or for a physically or mentally challenged child. Enter the total monthly amount that you actually expend for education that is a condition of employment and for education that is required for a physically or mentally challenged dependent child for whom no public education providing similar services is available.	\$
30	Other Necessary Expenses: childcare. Enter the average monthly amount that you actually expend on childcare—such as baby-sitting, day care, nursery and preschool. Do not include other educational payments.	\$
31	Other Necessary Expenses: health care. Enter the average monthly amount that you actually expend on health care expenses that are not reimbursed by insurance or paid by a health savings account. Do not include payments for health insurance or health savings accounts listed in Line 34.	\$
32	Other Necessary Expenses: telecommunication services. Enter the average monthly amount that you actually pay for telecommunication services other than your basic home telephone service—such as cell phones, pagers, call waiting, caller id, special long distance, or internet service—to the extent necessary for your health and welfare or that of your dependents. Do not include any amount previously deducted.	\$
33	Total Expenses Allowed under IRS Standards. Enter the total of Lines 19 through 32.	\$

Subpart B: Additional Expense Deductions under § 707(b)

Note: Do not include any expenses that you have listed in Lines 19-32

34	Health Insurance, Disability Insurance, and Health Savings Account Expenses. List and total the average monthly amounts that you actually pay for yourself, your spouse, or your dependents in the following categories.		\$	
	a.	Health Insurance		\$
	b.	Disability Insurance		\$
	c.	Health Savings Account		\$
				Total: Add Lines a, b and c
35	Continued contributions to the care of household or family members. Enter the actual monthly expenses that you will continue to pay for the reasonable and necessary care and support of an elderly, chronically ill, or disabled member of your household or member of your immediate family who is unable to pay for such expenses.	\$		
36	Protection against family violence. Enter any average monthly expenses that you actually incurred to maintain the safety of your family under the Family Violence Prevention and Services Act or other applicable federal law. The nature of these expenses is required to be kept confidential by the court.	\$		
37	Home energy costs. Enter the average monthly amount, in excess of the allowance specified by IRS Local Standards for Housing and Utilities, that you actually expend for home energy costs. You must provide your case trustee with documentation demonstrating that the additional amount claimed is reasonable and necessary.	\$		
38	Education expenses for dependent children less than 18. Enter the average monthly expenses that you actually incur, not to exceed \$137.50 per child, in providing elementary and secondary education for your dependent children less than 18 years of age. You must provide your case trustee with documentation demonstrating that the amount claimed is reasonable and necessary and not already accounted for in the IRS Standards.	\$		
39	Additional food and clothing expense. Enter the average monthly amount by which your food and clothing expenses exceed the combined allowances for food and apparel in the IRS National Standards, not to exceed five percent of those combined allowances. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.) You must provide your case trustee with documentation demonstrating that the additional amount claimed is reasonable and necessary.	\$		
40	Continued charitable contributions. Enter the amount that you will continue to contribute in the form of cash or financial instruments to a charitable organization as defined in 26 U.S.C. § 170(c)(1)-(2).	\$		
41	Total Additional Expense Deductions under § 707(b). Enter the total of Lines 34 through 40	\$		

Subpart C: Deductions for Debt Payment																								
42	<p>Future payments on secured claims. For each of your debts that is secured by an interest in property that you own, list the name of the creditor, identify the property securing the debt, and state the Average Monthly Payment. The Average Monthly Payment is the total of all amounts contractually due to each Secured Creditor in the 60 months following the filing of the bankruptcy case, divided by 60. Mortgage debts should include payments of taxes and insurance required by the mortgage. If necessary, list additional entries on a separate page.</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 5%;"></th> <th style="width: 30%;">Name of Creditor</th> <th style="width: 40%;">Property Securing the Debt</th> <th style="width: 25%;">60-month Average Payment</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">a.</td> <td></td> <td></td> <td style="text-align: right;">\$</td> </tr> <tr> <td style="text-align: center;">b.</td> <td></td> <td></td> <td style="text-align: right;">\$</td> </tr> <tr> <td style="text-align: center;">c.</td> <td></td> <td></td> <td style="text-align: right;">\$</td> </tr> <tr> <td colspan="3"></td> <td style="text-align: right;">Total: Add Lines a, b and c.</td> </tr> </tbody> </table>				Name of Creditor	Property Securing the Debt	60-month Average Payment	a.			\$	b.			\$	c.			\$				Total: Add Lines a, b and c.	\$
	Name of Creditor	Property Securing the Debt	60-month Average Payment																					
a.			\$																					
b.			\$																					
c.			\$																					
			Total: Add Lines a, b and c.																					
43	<p>Other payments on secured claims. If any of debts listed in Line 42 are secured by your primary residence, a motor vehicle, or other property necessary for your support or the support of your dependents, you may include in your deduction 1/60th of any amount (the "cure amount") that you must pay the creditor in addition to the payments listed in Line 42, in order to maintain possession of the property. The cure amount would include any sums in default that must be paid in order to avoid repossession or foreclosure. List and total any such amounts in the following chart. If necessary, list additional entries on a separate page.</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 5%;"></th> <th style="width: 30%;">Name of Creditor</th> <th style="width: 40%;">Property Securing the Debt</th> <th style="width: 25%;">1/60th of the Cure Amount</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">a.</td> <td></td> <td></td> <td style="text-align: right;">\$</td> </tr> <tr> <td style="text-align: center;">b.</td> <td></td> <td></td> <td style="text-align: right;">\$</td> </tr> <tr> <td style="text-align: center;">c.</td> <td></td> <td></td> <td style="text-align: right;">\$</td> </tr> <tr> <td colspan="3"></td> <td style="text-align: right;">Total: Add Lines a, b and c</td> </tr> </tbody> </table>				Name of Creditor	Property Securing the Debt	1/60th of the Cure Amount	a.			\$	b.			\$	c.			\$				Total: Add Lines a, b and c	\$
	Name of Creditor	Property Securing the Debt	1/60th of the Cure Amount																					
a.			\$																					
b.			\$																					
c.			\$																					
			Total: Add Lines a, b and c																					
44	<p>Payments on priority claims. Enter the total amount of all priority claims (including priority child support and alimony claims), divided by 60.</p>			\$																				
45	<p>Chapter 13 administrative expenses. If you are eligible to file a case under Chapter 13, complete the following chart, multiply the amount in line a by the amount in line b, and enter the resulting administrative expense.</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tbody> <tr> <td style="width: 5%; text-align: center;">a.</td> <td style="width: 55%;">Projected average monthly Chapter 13 plan payment.</td> <td style="width: 40%; text-align: right;">\$</td> </tr> <tr> <td style="text-align: center;">b.</td> <td>Current multiplier for your district as determined under schedules issued by the Executive Office for United States Trustees. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.)</td> <td style="text-align: center;">x</td> </tr> <tr> <td style="text-align: center;">c.</td> <td>Average monthly administrative expense of Chapter 13 case</td> <td style="text-align: right;">Total: Multiply Lines a and b</td> </tr> </tbody> </table>			a.	Projected average monthly Chapter 13 plan payment.	\$	b.	Current multiplier for your district as determined under schedules issued by the Executive Office for United States Trustees. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.)	x	c.	Average monthly administrative expense of Chapter 13 case	Total: Multiply Lines a and b	\$											
a.	Projected average monthly Chapter 13 plan payment.	\$																						
b.	Current multiplier for your district as determined under schedules issued by the Executive Office for United States Trustees. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.)	x																						
c.	Average monthly administrative expense of Chapter 13 case	Total: Multiply Lines a and b																						
46	<p>Total Deductions for Debt Payment. Enter the total of Lines 42 through 45.</p>			\$																				
Subpart D: Total Deductions Allowed under § 707(b)(2)																								
47	<p>Total of all deductions allowed under § 707(b)(2). Enter the total of Lines 33, 41, and 46.</p>			\$																				

Part VI. DETERMINATION OF § 707(b)(2) PRESUMPTION		
48	Enter the amount from Line 18 (Current monthly income for § 707(b)(2))	\$
49	Enter the amount from Line 47 (Total of all deductions allowed under § 707(b)(2))	\$
50	Monthly disposable income under § 707(b)(2). Subtract Line 49 from Line 48 and enter the result	\$
51	60-month disposable income under § 707(b)(2). Multiply the amount in Line 50 by the number 60 and enter the result.	\$

52	<p>Initial presumption determination. Check the applicable box and proceed as directed.</p> <p><input type="checkbox"/> The amount on Line 51 is less than \$6,575. Check the box for "The presumption does not arise" at the top of page 1 of this statement, and complete the verification in Part VIII. Do not complete the remainder of Part VI.</p> <p><input type="checkbox"/> The amount set forth on Line 51 is more than \$10,950. Check the box for "The presumption arises" at the top of page 1 of this statement, and complete the verification in Part VIII. You may also complete Part VII. Do not complete the remainder of Part VI.</p> <p><input type="checkbox"/> The amount on Line 51 is at least \$6,575, but not more than \$10,950. Complete the remainder of Part VI (Lines 53 through 55).</p>
53	<p>Enter the amount of your total non-priority unsecured debt \$</p>
54	<p>Threshold debt payment amount. Multiply the amount in Line 53 by the number 0.25 and enter the result. \$</p>
55	<p>Secondary presumption determination. Check the applicable box and proceed as directed.</p> <p><input type="checkbox"/> The amount on Line 51 is less than the amount on Line 54. Check the box for "The presumption does not arise" at the top of page 1 of this statement, and complete the verification in Part VIII.</p> <p><input type="checkbox"/> The amount on Line 51 is equal to or greater than the amount on Line 54. Check the box for "The presumption arises" at the top of page 1 of this statement, and complete the verification in Part VIII. You may also complete Part VII.</p>

Part VII: ADDITIONAL EXPENSE CLAIMS

56	<p>Other Expenses. List and describe any monthly expenses, not otherwise stated in this form, that are required for the health and welfare of you and your family and that you contend should be an additional deduction from your current monthly income under § 707(b)(2)(A)(ii)(I). If necessary, list additional sources on a separate page. All figures should reflect your average monthly expense for each item. Total the expenses.</p> <table border="1" style="width: 100%; border-collapse: collapse; margin-top: 10px;"> <thead> <tr> <th style="width: 5%;"></th> <th style="width: 70%;">Expense Description</th> <th style="width: 25%;">Monthly Amount</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">a.</td> <td></td> <td style="text-align: center;">\$</td> </tr> <tr> <td style="text-align: center;">b.</td> <td></td> <td style="text-align: center;">\$</td> </tr> <tr> <td style="text-align: center;">c.</td> <td></td> <td style="text-align: center;">\$</td> </tr> <tr> <td colspan="2" style="text-align: right;">Total: Add Lines a, b and c</td> <td style="text-align: center;">\$</td> </tr> </tbody> </table>		Expense Description	Monthly Amount	a.		\$	b.		\$	c.		\$	Total: Add Lines a, b and c		\$
	Expense Description	Monthly Amount														
a.		\$														
b.		\$														
c.		\$														
Total: Add Lines a, b and c		\$														

Part VIII: VERIFICATION

57	<p>I declare under penalty of perjury that the information provided in this statement is true and correct. <i>(If this is a joint case, both debtors must sign.)</i></p> <p style="margin-left: 40px;">Date: _____ Signature: _____ (Debtor)</p> <p style="margin-left: 40px;">Date: _____ Signature: _____ (Joint Debtor, if any)</p>
----	--

AUDITEE RESPONSE



U.S. Department of Justice

Executive Office for United States Trustees


Office of the Director

Washington, D.C. 20530

March 10, 2008

MEMORANDUM

TO: Raymond J. Beaudet
Assistant Inspector General for Audit
Office of the Inspector General

FROM: Clifford J. White III 
Director

SUBJECT: United States Trustee Program's Oversight of Chapter 7 Panel Trustees and Debtors

Thank you for the opportunity to review and comment on the Office of the Inspector General's (OIG) draft report on the U.S. Trustee Program's (Program) Oversight of Chapter 7 Panel Trustees and Debtors. The report determined that the Program's system of audits and reviews of chapter 7 trustees, and its implementation of key provisions of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA), were both adequate. The report also recognized the challenges that the Program faces as a result of the additional responsibilities assigned to it by the BAPCPA and the expected rise in case filings over the next few years. The report reflects careful analysis and offers constructive recommendations which we endorse.

Pursuant to your memorandum dated February 28, 2008, we provide the following comments and list of actions we will take in response to your recommendations.

I. TRUSTEE OVERSIGHT

A. Key Findings and Conclusions

Chapter 7 panel trustees are responsible for liquidating well in excess of \$2 billion in bankruptcy estate assets annually and distributing funds to creditors in accordance with the priority scheme set forth in the Bankruptcy Code. Importantly, the OIG report found that the Program has developed a comprehensive system to monitor the performance of chapter 7 trustees in meeting their statutory and fiduciary responsibilities.

The report examined four key mechanisms the Program employs to monitor trustees: onsite audits conducted by certified public accountants (CPA audits), onsite United States

Raymond J. Beaudet
Assistant Inspector General for Audit - 2

Trustee field examinations (UST field exam), annual trustee interim report reviews, and biannual trustee performance reviews. OIG staff determined that the totality of the Program's oversight measures are adequate to ensure the competency and integrity of the panel trustees. Among other things, the report found that CPA audits and UST field exams are valuable tools in identifying internal control weaknesses and that Program staff take appropriate corrective action to insure that identified problems are resolved.

The report appropriately notes that while all CPA audits were performed on a timely basis, there were instances when UST field exams were not completed within the normal four year cycle. Compliance with established oversight protocols is important, and the report's identification of deviations from these protocols will help us to ensure proper performance by our field offices. It is important to point out, however, that almost half of the untimely reviews were completed within one year of their scheduled date. In fact, in 28 instances, there had been both a CPA audit and a UST field exam within the eight year cycle but, because the CPA audit was completed early, the UST field exam was technically late. Moreover, in almost all the cited matters, trustee interim report reviews and performance reviews – two key means of monitoring trustee performance – were conducted timely. Finally, none of the trustees who were subject to a delayed UST field exam were high risk trustees (i.e., trustees with a history of significant deficiencies) and, notably, none were found deficient when they ultimately received their field exam.

As the report notes, many of our offices are under strain because the Program absorbed substantial new responsibilities under the BAPCPA. This is particularly true with regard to conducting a means test review in consumer cases. This task is extremely resource intensive. It is not surprising that the majority of trustee oversight issues arose in regions with the largest number of consumer filings or in those with significant numbers of time-consuming chapter 11 cases. For example, 60 percent of the trustee interim reports that were not reviewed were in Region 9, which carries the heaviest chapter 7 caseload in the country.

B. Recommendations

The report makes two recommendations:

1. Ensure that panel trustees receive either a CPA audit or a UST field examination every 4 years in accordance with USTP policy.
2. Ensure that regional USTs complete annual trustee interim report reviews for all panel trustees in accordance with USTP policy.

The Program supports both of these recommendations and will take the following steps to implement the OIG's recommendations within the next 120 days.

1. Issue guidance to the field to reinforce extant policies, including the importance of satisfying deadlines contained in our trustee oversight protocols.

Raymond J. Beaudet
Assistant Inspector General for Audit - 3

2. Design a tracking system patterned on the one employed for CPA audits to ensure the timely scheduling of UST field exams by the field offices, as well as completion of the reviews.
3. At the next meeting of United States Trustees scheduled in April 2008 discuss the OIG report and our actions in response to the recommendations. The United States Trustees responsible for the 21 regions will be briefed on the tracking system and the importance of completing either a CPA audit or a UST field exam every four years will be stressed.
4. Modify the performance work plans of Program managers to specifically address compliance with trustee oversight protocols.
5. Issue a memorandum to chapter 7 trustees addressing our commitment to timely and adequate oversight of their performance. This topic will also be addressed in regular liaison meetings of the Program and the National Association of Bankruptcy Trustees.
6. Incorporate trustee oversight into applicable training courses for Program staff and chapter 7 trustees.
7. Ensure that trustee oversight is a prominent part of the agendas for the periodic regional performance review meetings that the Deputy Director and Associate Director conduct with each United States Trustee.

II. DEBTOR OVERSIGHT

A. Key Findings and Conclusions

The OIG staff conducted the first formal review of the Program's implementation of two important provisions of the BAPCPA – means testing and debtor audits. We are pleased that the report concludes that we have successfully implemented effective systems for these two important mandates of the BAPCPA. Implementation of any new, complex statute presents daunting challenges, and it is particularly gratifying that the OIG's comprehensive review has ratified our efforts.

The report correctly notes that the implementation of the BAPCPA, particularly the means testing provision, has been extremely time and staff intensive. Although bankruptcy filings dropped after the statute became effective, they have been rising steadily and calendar year 2008 case filings may exceed those of 2007 by 25 percent. We concur with the OIG that if filings were to continue to rise, the Program would face great difficulty in meeting all of its core responsibilities, while maintaining its current efforts to implement means testing. This problem will be exacerbated by our current down-sizing required by the 2008 appropriations level which is \$22 million below our current services base. In fiscal year 2008, we will freeze hiring of

Raymond J. Beaudet
Assistant Inspector General for Audit - 4

about 100 authorized positions, eliminate 20 additional staff positions, and reduce resources available for automation improvements.

As reflected in the report, several years ago, the Program began working with the Administrative Office of the United States Courts (AOUSC) to develop a process for “data tagging” forms filed by debtors. With data tagging, financial information filed with the court could be sorted electronically, thus obviating the need for much of the manual analyses now required. The two agencies jointly developed a technical standard for such forms, but the AOUSC did not issue it as a mandatory standard. The report cites AOUSC officials as acknowledging the benefit of data-enabled forms, but expressing concern that it would have an adverse economic impact on the bankruptcy community, particularly pro se debtors and smaller law firms. When that concern was first raised, the Program responded that it did not believe that the new software would be a substantial expense for most bankruptcy practitioners who already utilize bankruptcy forms software. Moreover, to mitigate the AOUSC's concerns, the Program proposed two options: (1) approve two technical standards, including a fillable forms solution already available on the U.S. Trustee Program's Web site for use by pro se filers, low-volume filing firms, and public interest groups; or (2) exempt pro se filers, low-volume filing firms, and public interest groups from the mandatory use of the data-enabled form standard. The Program continues to believe that cost is not a critical issue.

We understand that the Judicial Conference of the United States will address the issue of data-enabled form standard in a report later this month, but we are not aware of the conclusion the Conference may have reached. At this point, however, we believe that there will not be any additional automated support for our staff for at least the remainder of this fiscal year.

B. Recommendations

The report makes two sound recommendations concerning the Program's oversight of debtors:

1. Continue to work with the Administrative Office for United States Courts to require mandatory use of the jointly developed “data-enabled form standard.”
2. Formulate a plan addressing allocation of resources, prioritization of duties, and streamlining of processes in order to meet means testing requirements in the event of a significant increase in bankruptcy filings.

The Program supports both of these recommendations and either has taken or will take the following steps to implement the OIG recommendations within the next 120 days.

1. Continue to cooperate with the AOUSC and to encourage the courts to adopt the jointly developed data-enabled form standard as a mandatory standard.

Raymond J. Beaudet
Assistant Inspector General for Audit - 5

2. Provide a formal plan describing the steps we have taken or intend to take to optimize resources in an environment of expanded responsibilities and diminished resources.
3. Continue to emphasize to field staff two important policy memoranda from the Director pertaining to streamlining operations and maximizing the use of available resources. Several months ago, guidance was provided to field managers on how to target their means testing efforts to increase effectiveness while expending fewer resources. Shortly after that, a working group was formed to review office procedures and practices in light of Program experience in enforcing the BAPCPA and to offer further recommendations for streamlining activities. Based on that group's work and extensive discussions with the United States Trustees, additional guidance was recently issued on how to enhance effectiveness while reducing the workload of staff. For example, offices are to limit their review of the bankruptcy documents of debtors with below median income absent indices of abuse.
4. Devote a significant portion of the April meeting of the United States Trustees to the issue of streamlining by, among other things, assessing the impact of the recent policy changes and exploring other opportunities to reduce the time demands on staff.
5. Conduct a study to assess the steps of the means test review and the amount of time involved in each step to help determine the areas that are the most ripe for future efficiencies.
6. Incorporate an evaluation of compliance with streamlining initiatives into the Program's peer review process. Through peer review, managers and employees from offices around the country assess the practices of other offices and, among other things, identify best practices to share with all offices.

I would like to express my appreciation for the hard work of the team that conducted the audit, their perceptiveness, and their collegiality. I look forward to working with your office as we move forward with the implementation of the report's recommendations.

**OFFICE OF THE INSPECTOR GENERAL, AUDIT DIVISION
ANALYSIS AND SUMMARY OF ACTIONS NECESSARY TO CLOSE THE REPORT**

We provided a draft audit report to the EOUST for review and comment. The EOUST's comments, which detail the actions it has taken or plans to implement in response to our recommendations, have been included as Appendix X to this report.

This Appendix summarizes our analysis of the EOUST's comments and proposed actions required to close the report.

Recommendations:

1. **Resolved.** The EOUST agreed with this recommendation and enumerated seven steps that it intends to take, including the issuance of guidance to the field to reinforce policies and stress the need to meet deadlines and the design and implementation of a tracking system for field examinations and Trustee Interim Report reviews. In addition, the EOUST also stated that it plans to modify performance work plans for program managers to address compliance with trustee oversight protocols. This recommendation can be closed when we are provided evidence that the corrective action described in the EOUST's seven steps have been implemented.
2. **Resolved.** The EOUST agreed with this recommendation and enumerated seven steps that it intends to take, including the issuance of guidance to the field to reinforce policies and stress the need to meet deadlines and the design and implementation of a tracking system for field examinations and Trustee Interim Report reviews. In addition, the EOUST also stated that it plans to modify performance work plans for program managers to address compliance with trustee oversight protocols. This recommendation can be closed when we are provided evidence that the corrective action described in the EOUST's seven steps have been implemented.
3. **Resolved.** The EOUST agreed with this recommendation and stated that it will continue to cooperate with the AOUSC and encourage the courts to adopt the jointly developed data-enabled form as a mandatory standard. The EOUST also stated that the Judicial Conference of the United States will address the issue of the data-enabled form standard in the near future. In order to close this

recommendation, please provide to us the results of the Judicial Conference report. In addition, please provide to us the AOUSC's response to the EOUST's proposed options to mitigate the impact of mandatory data-enabled forms on bankruptcy practitioners. Finally, please provide to us the proposed agenda to move the issue of data-enabled forms forward based on the AOUSC's response to the EOUST's proposed options.

4. **Resolved.** The EOUST agreed with this recommendation and enumerated five steps that it intends to take, or has already taken, including the development of a plan to address expanded responsibilities and diminished resources as well as issuance of guidance on streamlining for means testing. In addition, the EOUST plans to conduct a study of the means testing process to identify where opportunities exist for further streamlining. The EOUST also plans to incorporate an evaluation of compliance with streaming initiatives into the USTP's peer review process. This recommendation can be closed when we receive evidence that the corrective action described in the EOUST's five steps have been implemented.