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UNITED STATES TRUSTEE PROGRAM
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Annual Report of Significant Accomplishments
Fiscal Year 2006



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Message from the Director



Clifford J. White III
*Director, Executive Office
for United States Trustees*

During Fiscal Year 2006, the paramount goal of the United States Trustee Program was to help make bankruptcy reform work for all stakeholders in the system, including debtors, creditors, and the general public. The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA) took effect in the first weeks of FY 2006. The law provided important tools to enhance the integrity and efficiency of the bankruptcy system, making it more transparent and more objective in both business and consumer cases. In consumer cases the BAPCPA instituted a means test to provide greater predictability in determining eligibility for Chapter 7 relief, while in Chapter 11 cases the law made business management more accountable by setting tighter deadlines, encouraging the appointment of trustees, and limiting executive compensation.

The BAPCPA created major new duties for the Program. Those duties included conducting the means test, scrutinizing and approving pre-bankruptcy credit counseling agencies and post-bankruptcy debtor educators, supervising audits of Chapter 7 and Chapter 13 consumer cases, and enforcing the new provisions that increase management accountability in Chapter 11. The Program carried out these new duties while continuing to pursue other activities critical to protecting the integrity of the bankruptcy system. U.S. Trustees initiated more than 58,000 civil enforcement inquiries and actions, resulting in more than \$878 million in debts not discharged, fines imposed, petition preparers' fees recovered, and attorneys' fees reduced and disgorged. The Program strengthened its criminal enforcement role, participating in a nationwide criminal bankruptcy fraud sweep, increasing its criminal referrals by 20 percent over FY 2005, and creating an Internet hotline for reporting suspected bankruptcy fraud. It also engaged in oversight of Chapter 11 cases; appointed and supervised the private trustees who administer cases under Chapters 7, 12, and 13; and proceeded with several Congressionally mandated studies.

A critical element of the Program's strategy to enforce and implement the BAPCPA is the faithful execution of the law through the exercise of sound discretion and prudent judgment. Successful implementation was due at least in part to the incredibly hard work of the dedicated professionals in the Program and in the larger bankruptcy community. The Attorney General publicly recognized the exceptional contributions and achievements of six Program employees at the 54th Annual Attorney General's Awards Ceremony in September 2006. Five employees were honored for their outstanding contributions to the implementation of the BAPCPA's credit counseling and debtor education provisions, and one was recognized for her leadership in combating fraud and abuse in the bankruptcy system.

Please accept my invitation to learn more about the Program's activities by reading our *Fiscal Year 2006 Annual Report of Significant Accomplishments*.

A handwritten signature in black ink that reads "Clifford J. White III".

Protecting the Integrity of the Bankruptcy System

Protecting the integrity and ensuring the effective operation of the nation's bankruptcy system is a strategic objective of the Department of Justice. The Department's *Strategic Plan for Fiscal Years 2003-2008* provides these strategies for overseeing the bankruptcy system:

- Enforce compliance with federal bankruptcy laws and take civil actions against parties who abuse the law or seek to defraud the bankruptcy system.
- Pursue violations of federal criminal laws pertaining to bankruptcy by identifying, evaluating, referring, and providing investigative and prosecutorial support of cases.
- Promote the effectiveness of the bankruptcy system by appointing and regulating private trustees who administer bankruptcy cases expeditiously and maximize the return to creditors.
- Ensure financial accountability, compliance with the Bankruptcy Code, and prompt disposition of Chapter 11 bankruptcy cases.

The U.S. Trustee Program is the litigating component of the Department of Justice that is responsible for overseeing the administration of the nation's bankruptcy system. The Program's mission is to promote the integrity and efficiency of the bankruptcy system by enforcing bankruptcy laws, providing oversight of private trustees, and maintaining operational excellence. To carry out its mission, the Program has standing to participate in every bankruptcy case within its jurisdiction. (By statute, the Program does not have jurisdiction in Alabama and North Carolina.)

In FY 2006, the Program devoted priority attention to the enforcement and implementation of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA). The new law, which was enacted on April 20, 2005, with a general effective date of October 17, 2005, set forth major new responsibilities for the Program that included:

- Implementing a "means test" to determine whether a debtor is eligible for Chapter 7 or must file under Chapter 13.
- Approving pre-bankruptcy credit counseling agencies and pre-discharge debtor education providers.
- Supervising audits to determine whether a consumer debtor's bankruptcy documents are accurate.
- Engaging in enhanced oversight of small business Chapter 11 reorganization cases.
- Conducting and preparing a variety of studies and reports.

The changes required to implement the BAPCPA reached throughout the Program, necessitating new policies and procedures relating to civil and criminal enforcement, oversight of Chapter 11 business reorganizations, trustee supervision, data collection, information technology, training, and other Program operations. Many of these policies and procedures are detailed throughout this annual report.

Organization and Budget

The Program is managed by an Executive Office in Washington, D.C., that is headed by a Director; 21 regions are led by United States Trustees; and 95 field offices are supervised by Assistant U.S. Trustees. The geographic jurisdiction of each region is determined by statute. The 95 field offices cover more than 300 sites where bankruptcy judges conduct proceedings, and over 450 administrative meeting locations, in 88 judicial districts in 48 states, the District of Columbia, and four territories. At the conclusion of FY 2006, the Program employed 1,246 attorneys, financial analysts, and support staff. More than 92 percent of the Program's employees were located in the field.

The Program is funded through user fees paid by bankruptcy debtors. All revenues are deposited into the United States Trustee System Fund. The Program may expend funds as appropriated by Congress. Historically, about 60 percent of the Program's funding is derived from quarterly fees paid in Chapter 11 reorganization cases. The balance of the funds comes from filing fees paid in cases filed under Chapters 7, 11, 12, and 13, as well as interest earnings and other miscellaneous revenue.

The Department's budget process incorporates performance planning and reporting, in compliance with the Government Performance and Results Act of 1993. This ensures that performance measures are used when resource decisions are made and that resource allocations are consistent with the Department's FY 2007-2012 Strategic Plan. In addition, the Program's management decisions reflect the President's Management Agenda.

The Program's appropriation for FY 2006 totaled \$211,664,000 with 1,468 authorized positions. In FY 2006, the Program received budget enhancements totaling \$26.4 million to implement the BAPCPA. The FY 2006 Appropriations Act provided half-year funding for 270 new positions to carry out the Program's new means testing and credit counseling responsibilities, as well as funding to develop information technology systems related to the BAPCPA and to carry out congressionally-mandated studies and reports.

Employee Excellence Recognized

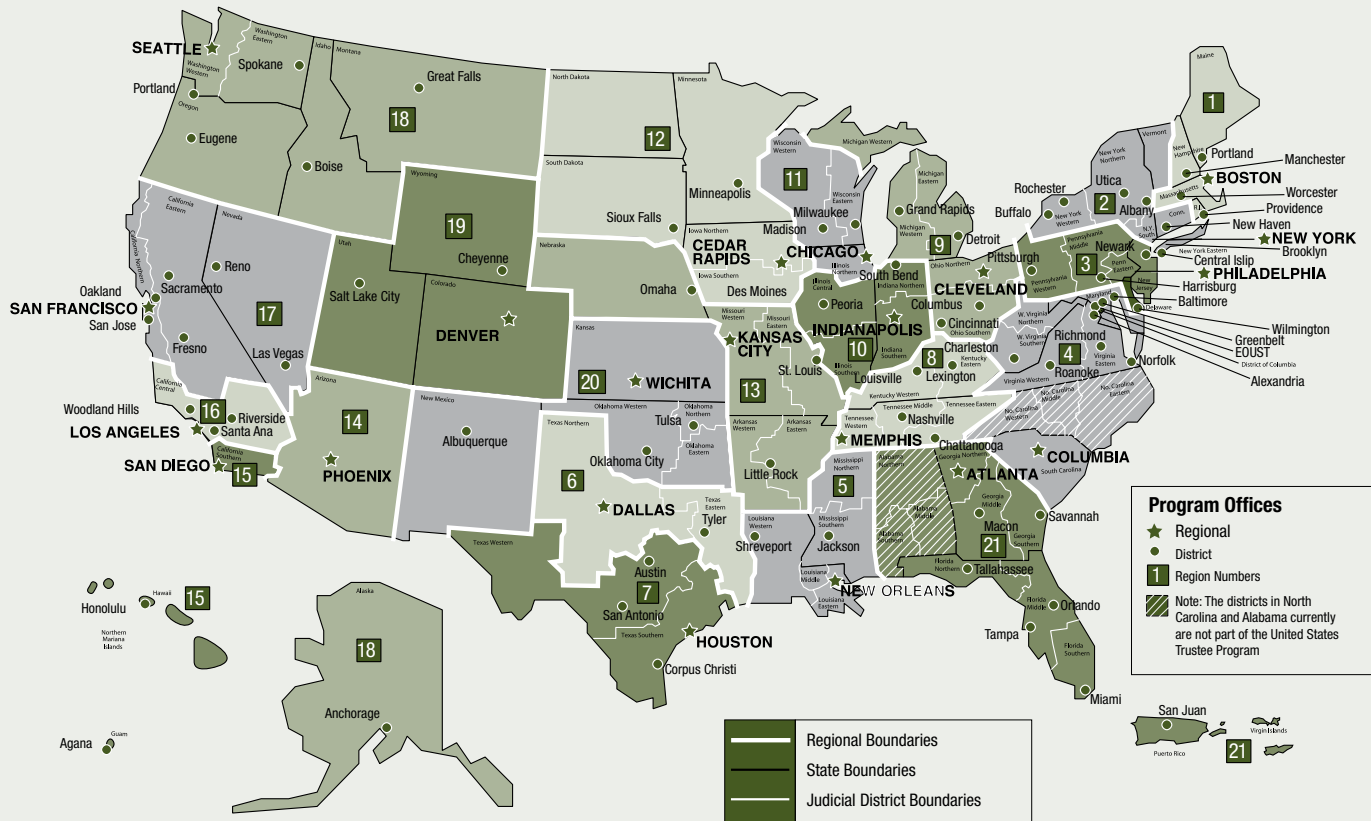
In FY 2006, the Attorney General publicly recognized several Program employees for their exceptional achievements and contributions to the Justice Department and the justice system. Six employees were honored at the 54th Annual Attorney General's Awards Ceremony in September 2006.

Assistant U.S. Trustees Cynthia Burnette of Tampa, Patricia Fahey of Omaha, John Fitzgerald of Boston, Henry Hobbs of Austin, and Mark Neal of Baltimore received the Attorney General's Award for Distinguished Service for their outstanding contributions to the implementation of the BAPCPA's credit counseling and debtor education provisions. The five Assistant U.S. Trustees served on detail in Washington, D.C., to supervise the development of the Program's Credit Counseling and Debtor Education Unit, created to carry out the new statutory provisions.

Assistant U.S. Trustee Monsita Lecaroz-Arribas received the Attorney General's Award for Outstanding Service by a New Employee for her leadership of the Program's office in San Juan, Puerto Rico, and her efforts to combat fraud and abuse in the bankruptcy system.

In addition, EOUST Director Clifford J. White III received a Presidential Rank Award for Meritorious Service. Each year, the President recognizes a small group of career senior executives with the President's Rank Award for exceptional long-term accomplishments, with a focus on leadership and results. Award recipients are chosen through a rigorous process that includes nomination by their agency heads, evaluation by boards of private citizens, and approval by the President.

United States Trustee Program Map of Regions and Offices



U.S. Trustee Program Nationwide Office Locator

Executive Office for U S Trustees

Washington, D.C.

Regional and Field Offices (by State)

Alaska

Anchorage

Arizona

Phoenix

Arkansas

Little Rock

California

Fresno

Los Angeles

Oakland

Riverside

Sacramento

San Diego

San Francisco

San Jose

Santa Ana

Woodland Hills

Colorado

Denver

Connecticut

New Haven

Delaware

Wilmington

Florida

Miami

Orlando

Tallahassee

Tampa

Georgia

Atlanta

Macon

Savannah

Hawaii

Honolulu

Idaho

Boise

Illinois

Chicago

Peoria

Indiana

Indianapolis

South Bend

Iowa

Cedar Rapids

Des Moines

Kansas

Wichita

Kentucky

Lexington

Louisville

Louisiana

New Orleans

Shreveport

Maine

Portland

Maryland

Baltimore

Greenbelt

Massachusetts

Boston

Worcester

Michigan

Detroit

Grand Rapids

Minnesota

Minneapolis

Mississippi

Jackson

Missouri

Kansas City

St. Louis

Montana

Great Falls

Nebraska

Omaha

Nevada

Las Vegas

Reno

New Hampshire

Manchester

New Jersey

Newark

New Mexico

Albuquerque

New York

Albany

Brooklyn

Buffalo

Central Islip

New York City

Rochester

Utica

Ohio

Cincinnati

Cleveland

Columbus

Oklahoma

Oklahoma City

Tulsa

Oregon

Eugene

Portland

Pennsylvania

Harrisburg

Philadelphia

Pittsburgh

Puerto Rico

San Juan

Rhode Island

Providence

South Carolina

Columbia

South Dakota

Sioux Falls

Tennessee

Chattanooga

Memphis

Nashville

Texas

Austin

Corpus Christi

Dallas

Houston

San Antonio

Tyler

Utah

Salt Lake City

Virginia

Alexandria

Norfolk

Richmond

Roanoke

Washington

Seattle

Spokane

West Virginia

Charleston

Wisconsin

Madison

Milwaukee

Wyoming

Cheyenne

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

The Bankruptcy Code

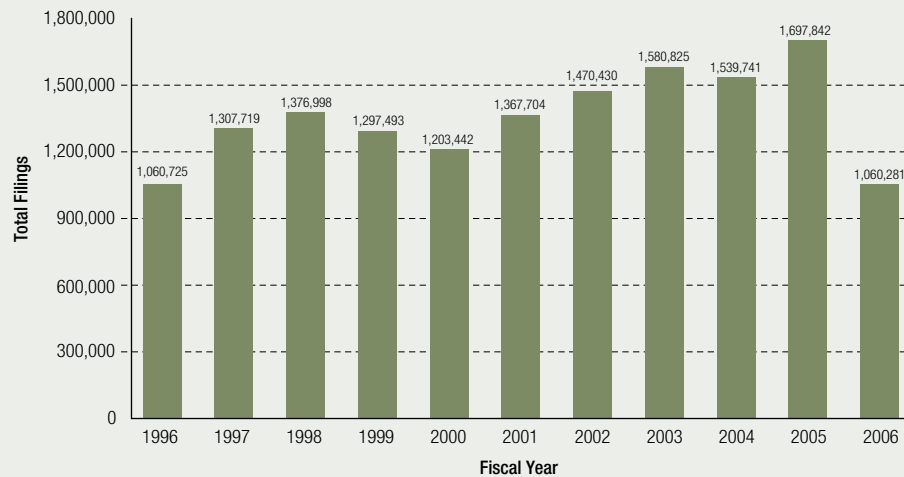
A bankruptcy case is a proceeding brought under federal law to discharge or reorganize the financial obligations of an individual or an entity. The federal Bankruptcy Code appears in Title 11 of the United States Code, beginning at 11 U.S.C. § 101. Most bankruptcy cases are filed under either Chapter 7, 11, 12, or 13 of the Bankruptcy Code.

Chapter 7 bankruptcy is a liquidation proceeding available to consumers and businesses. The assets of a debtor that are not exempt from creditors are collected and reduced to money, and the proceeds are distributed to creditors in accordance with a priority scheme established by the Bankruptcy Code. A consumer debtor receives a release from debt under Chapter 7, except for certain debts that are excepted from discharge by the Bankruptcy Code.

Chapter 11 provides a procedure by which an individual or a business can reorganize debts while continuing to operate. The vast majority of Chapter 11 cases are filed by businesses. The debtor, often with participation from creditors, creates a plan of reorganization under which it proposes to repay part or all of its debts.

Figure 2.1: Total Bankruptcy Filings Nationwide

Fiscal Years 1996 – 2006 (Totals do not include Alabama & North Carolina)

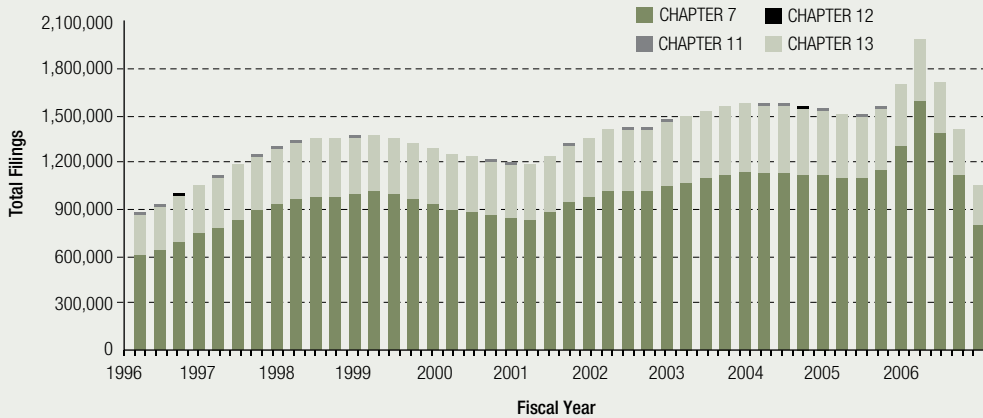


Chapter 12 allows a family farmer or fisher to file for bankruptcy, reorganize its business affairs, repay all or part of its debts, and continue operating.

Chapter 13 is used by individual consumers to reorganize their financial affairs under a repayment plan that must be completed within three to five years. To be eligible for

Figure 2.2: Total Bankruptcy Filings by Chapter

Fiscal Years 1996 – 2006 (Totals do not include Alabama & North Carolina)



Chapter 13 relief, a consumer must have regular income and may not have more than a specified amount of debt.

Case Filing Numbers

An unprecedented number of bankruptcy cases were filed immediately prior to the BAPCPA's effective date. In the first 16 days of October 2005, about 620,000 cases were filed in the 88 judicial districts covered by the Program. In the remaining eleven and one-half months of the fiscal year, there were approximately 440,000 cases filed in those 88 judicial districts. Filings subsequently began to increase at a moderate pace.

Nationwide, during FY 2006 individuals and businesses filed 1,112,542 bankruptcy cases, including 833,147 Chapter 7 filings, 272,937 Chapter 13 filings, 6,003 Chapter 11 filings, 376 Chapter 12 filings, and 79 cases filed under Chapter 9 or in relation to a foreign proceeding.

The mix of Chapter 7 and Chapter 13 cases changed in the cases filed after the BAPCPA's effective date. Pre-BAPCPA, over 70 percent of cases were filed as Chapter 7 liquidations and about 27 percent were filed as Chapter 13 repayment plans. Of the cases filed between the BAPCPA's effective date and the end of FY 2006, about 60 percent were filed under Chapter 7 and about 40 percent were filed under Chapter 13. As in FY 2005, during FY 2006 the remaining cases—Chapter 11 reorganizations, Chapter 9 filings by municipalities, Chapter 12 family farmer bankruptcies, and cases related to foreign proceedings—totaled about 1 percent of filings.

Bankruptcy Definitions

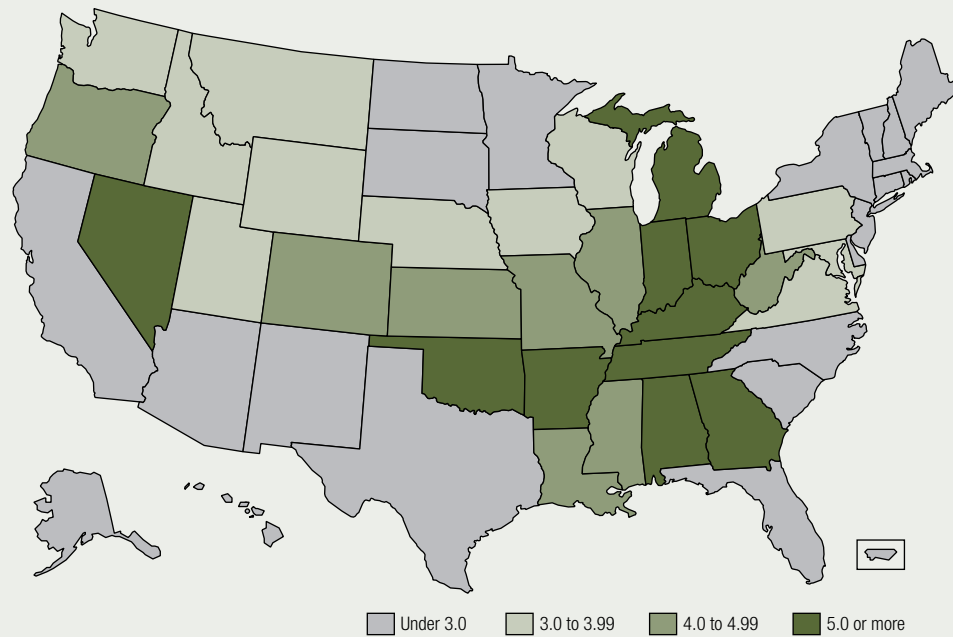
This list of definitions explains some of the terms used in this report to describe the bankruptcy process.

- **Administer**—Carry out financial and legal responsibilities that may include collecting and selling bankruptcy estate assets, investigating the debtor’s financial affairs, filing legal actions, and filing a final account of the case.
- **Automatic Stay**—An automatic prohibition on collection activity against the debtor, which takes effect as soon as the bankruptcy petition is filed but may be terminated or “lifted” under specified circumstances.
- **Creditor**—An individual or business to whom the debtor owes money.
- **Debtor**—An individual or business that files a petition for relief under the federal Bankruptcy Code.
- **Debtor-in-Possession**—A Chapter 11 debtor that retains control of its management while reorganizing its business.
- **Discharge**—Release of the debtor from personal liability for certain debts. A discharge prevents creditors from collecting their debts from the debtor.
- **Dismissal of Case**—A ruling by the bankruptcy court that ends the bankruptcy case without granting a discharge. When a case is dismissed, it is treated for most purposes as if it had not been filed, and creditors may resume their collection activities.
- **Denial of Discharge**—A ruling by the bankruptcy court that the debtor is prohibited from discharging the debts listed in the case. When the debtor is denied a discharge, the debtor is not released from liability for the debts.
- **Means Test**—A statutory test of the debtor’s ability to repay debts. If the debtor has an ability to repay, the debtor is presumed to be ineligible to file bankruptcy under Chapter 7.
- **Petition Preparer**—A non-attorney who prepares bankruptcy documents on behalf of debtors, for compensation.

- **Private Trustee or Case Trustee**—An individual appointed by the U.S. Trustee to administer bankruptcy cases. A private trustee or case trustee is not a government employee.
- **United States Trustee**—An official of the Department of Justice appointed to head one of 21 regions in the United States Trustee Program.

Figure 2.3: Bankruptcy Filings Relative to Population

(Cases Filed per 1,000 Population Fiscal Year 2006)



Combating Fraud and Abuse

The Program's National Civil Enforcement Initiative uses civil (non-criminal) enforcement tools to focus on wrong-doing both by debtors and by those who exploit debtors. The Program combats fraud and abuse by debtors primarily by seeking denial of discharge for the concealment of assets and other violations, and by seeking case dismissal if a debtor has an ability to repay debts. The Program protects consumer debtors from wrongdoing by attorneys, bankruptcy petition preparers, creditors, and others by pursuing a variety of remedies, including disgorgement of fees, fines, and injunctive relief.

The Program's civil enforcement activity consists of formal actions and informal inquiries. Formal actions include motions and complaints filed with the bankruptcy court, and informal inquiries include written and verbal communications with debtors, creditors, bankruptcy petition preparers, and attorneys. Civil enforcement actions and inquiries in cases filed by consumer debtors generally fall under one of the following provisions of the Bankruptcy Code:

- 11 U.S.C. § 727 to deny or revoke a Chapter 7 discharge.
- 11 U.S.C. § 707 to dismiss a case for abuse of Chapter 7.
- 11 U.S.C. § 110 for improper conduct by bankruptcy petition preparers.
- 11 U.S.C. § 329 for disgorgement of payments to professionals employed by the debtor or the bankruptcy estate.
- 11 U.S.C. § 524 for improper conduct by creditors.
- 11 U.S.C. §§ 109(g) and 349(a) for abusive repeat filings and other bad faith filings.
- Federal Rule of Bankruptcy Procedure 9011 for sanctions against professionals.

During Fiscal Year 2006, U.S. Trustees initiated more than 58,000 informal inquiries and formal civil enforcement actions, including 38,076 actions pursued under Sections 707(b), 727, 110, and 329, as well as civil actions in Chapter 11 business reorganization cases. In total, these inquiries and actions resulted in an overall potential benefit to creditors or fines imposed in excess of \$878 million, including unsecured debts not discharged in Chapter 7, fines imposed, petition preparers' fees recovered, and attorneys' fees reduced and disgorged. (See Table 3.1 for the most common types of Program civil enforcement actions and inquiries in consumer cases, as well as their estimated financial impact.)

Table 3 1: Civil Enforcement Activity Against Debtors

Type of Action		Number of Inquiries and Formal Actions	% Actions Successful	Estimated Financial Impact (million \$)
11 U.S.C. § 727 Denial or Revocation of Discharge	Actions	1,704	99.3%	\$297
	Inquiries	2,826		
	Total	4,530		
11 U.S.C. § 707 (a) Dismissal for Cause	Actions	6,477	97.3%	\$168
	Inquiries	4,624		
	Total	11,101		
11 U.S.C. § 707 (b) Dismissal for Abuse	Actions	4,301	96.8%	\$299
	Inquiries	26,864		
	Total	31,165		

Denial or Revocation of Discharge

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

A Chapter 7 discharge is usually issued about 60 days after the first date set for a meeting of creditors, unless a complaint seeking denial of the debtor’s discharge has been filed under 11 U.S.C. § 727. A bankruptcy discharge may be denied if the debtor engaged in improper conduct including: concealing assets; withholding information on the bankruptcy petition, schedules, or statement of financial affairs; destroying property to hinder or defraud a creditor or trustee; knowingly making a false oath; or refusing to obey a court order. A previously granted discharge may be revoked as a result of information discovered after the discharge was entered. Actions to deny or revoke discharge provide a strong remedy against debtors who attempt to undermine the integrity of the bankruptcy system.

During FY 2006, U.S. Trustees filed 1,704 actions objecting to the entry or seeking revocation of the debtor’s discharge, and initiated 2,826 informal inquiries pursuant to Section 727. In total, U.S. Trustees initiated 4,530 informal inquiries and formal court actions pursuant to Section 727.

Of the 1,338 U.S. Trustee actions objecting to discharge that were resolved by judicial decision or debtor consent in FY 2006, the discharge was denied, waived, or revoked in 1,328, or 99.3 percent. (As with all enforcement actions described in this chapter, the numbers of actions initiated and actions resolved during FY 2006 do not match, because some actions were initiated before the reporting period, some actions were resolved afterward, and some actions were withdrawn by the U.S. Trustee.) U.S. Trustee activity under Section 727 prevented 2,020 debtors from discharging \$297 million in general unsecured debt as a result of informal inquiries and formal complaints that resulted in voluntary waivers of discharge, dismissals, or conversions to Chapter 13.

Cases involving denial or revocation of discharge in FY 2006 included the following:

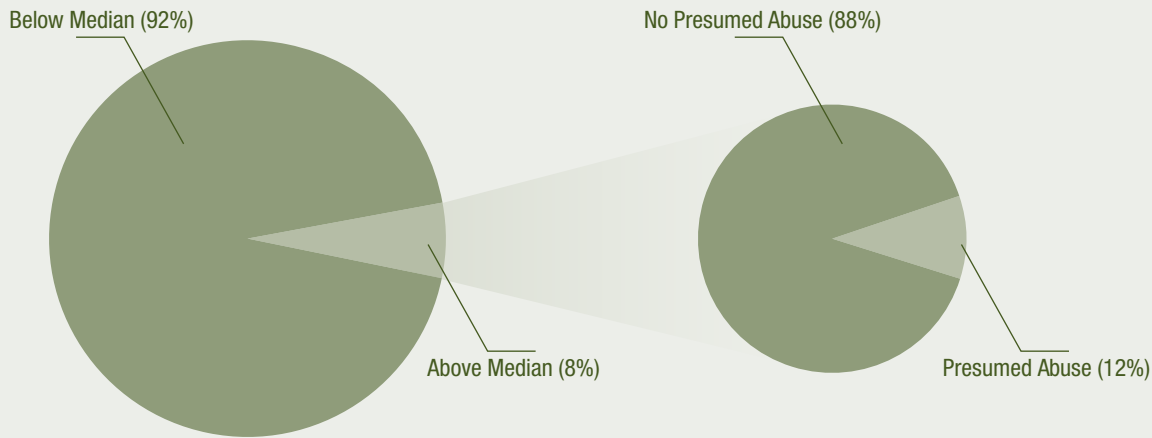
- The Bankruptcy Court for the District of Maryland approved consent orders denying discharges to a husband and wife, preventing their Chapter 7 discharge of more than \$46.8 million in unsecured debt. The Chapter 7 trustee's expert witness reported that the couple, doing business in their individual names and in the names of more than 200 separate putative entities, "flipped" at least 1,000 properties between 1999 and 2006 after purchasing the properties at foreclosure sales. The vast majority of the income from these transactions was undisclosed, as were the vast majority of the entities used to carry out the transactions. An investigation by the Greenbelt office and the Chapter 7 trustee also revealed that the debtors concealed property ownership, transferred numerous undisclosed assets before and after filing bankruptcy, and failed to file tax returns for several years.
- The Bankruptcy Court for the Western District of New York prevented the Chapter 7 discharge of \$2.5 million in unsecured debt by a debtor who failed to disclose assets and made false oaths. The Buffalo and Rochester offices worked together to seek denial of discharge. In his bankruptcy documents, at the Section 341 meeting, and at a Bankruptcy Rule 2004 examination, the debtor failed to disclose his interest in various businesses and made multiple false oaths. He also failed to list a creditor from whom he borrowed more than \$100,000 after filing bankruptcy. At trial, the creditor testified that the post-petition loans to the debtor would not have been made had the creditor known about the bankruptcy filing.

Dismissal of Case; Means Testing

Under the laws applicable to bankruptcy cases filed before October 17, 2005, a Chapter 7 consumer case could be dismissed under 11 U.S.C. § 707(a) for "cause" or under 11 U.S.C. § 707(b) for "substantial abuse." The BAPCPA substantially amended Section 707(b) to govern dismissal for "abuse" in cases filed on or after October 17, 2005. The law established a "means test" in Section 707(b)(2) for use in assessing a consumer debtor's eligibility for Chapter 7 relief. Under the means test, a case filed by a debtor with income above the applicable state median income is "presumed abusive" if the debtor has a certain level of disposable income after the deduction of expenses allowed under the statutory formula. When a case is presumed abusive, the BAPCPA requires the U.S. Trustee either to file a motion to dismiss the case or to explain why a motion to dismiss is not appropriate. Even if a case is presumed abusive, a debtor may rebut that presumption and show that dismissal is not warranted because special circumstances support an adjustment in income or expenses for which there is no reasonable alternative. When the presumption of abuse either does not arise or is rebutted, courts may still dismiss a case as abusive if the debtor filed the petition in "bad faith" or if the "totality of the circumstances" of the debtor's financial situation demonstrates abuse.

During FY 2006, the Program launched and fine-tuned its implementation of the means test. The Program made a major investment in training field personnel to perform the means test and to exercise appropriate discretion when determining whether to seek dismissal for presumed abuse. Approximately 8 percent of debtors who filed Chapter 7 bankruptcy between October 17, 2005, and the end of FY 2006 had incomes above the applicable state median income and were therefore subject to full review of their expenses to determine if the case was presumed abusive. Slightly less than 12 percent of those above-median cases were determined to be presumed abusive. (See Figure 3.1.)

Figure 3.1: Chapter 7 Filers Above and Below Applicable State Median Income



In FY 2006, U.S. Trustees filed 938 motions to dismiss for presumed abuse. U.S. Trustees declined to file a motion to dismiss in 261 cases in which the presumption of abuse arose under the means test. This represented 22 percent of the cases in which the presumption arose and in which the U.S. Trustees had concluded their case review.

Implementation of the means test requires screening of data on the debtor’s petition and schedules. In FY 2006 the Program continued to work extensively with the Judicial Conference’s Advisory Committee on Bankruptcy Rules to help develop the Official Forms and Federal Rules of Bankruptcy Procedure necessary to perform the means test. The courts did not mandate “smart forms” with “data tags” that would permit the automated screening of data on the petition and schedules. In the absence of such a mandate, the Program developed and used its own partially automated system to expedite calculations of debtor information under the statutory means test formula.

During FY 2006, U.S. Trustees filed 4,301 motions to dismiss for abuse under Section 707(b). This included the 938 motions in cases presumed abusive under Section 707(b)(2) and 242 motions based on bad faith or totality of the circumstances under Section 707(b)(3)



as affected by the BAPCPA, as well as 3,121 motions under Section 707(b) in cases filed before October 17, 2005. U.S. Trustees also initiated 26,864 informal inquiries pursuant to Section 707(b). In total, U.S. Trustees initiated 31,165 informal inquiries and formal court actions pursuant to Section 707(b).

Of the 3,104 U.S. Trustee motions to dismiss that were resolved by judicial decision or by debtor consent in FY 2006, U.S. Trustees were successful in 3,005, or 96.8 percent. U.S. Trustee activity under Section 707(b) prevented 9,733 debtors from the immediate Chapter 7 discharge of \$299 million in general unsecured debt.

During FY 2006, U.S. Trustees also filed 6,477 motions to dismiss under Section 707(a). U.S. Trustee activity under Section 707(a) prevented 6,778 debtors from the immediate discharge in Chapter 7 of over \$168 million in general unsecured debt.

Examples of Program actions seeking case dismissal in FY 2006 included the following:

- A Massachusetts debtor agreed to the dismissal of his case after the U.S. Trustee's Worcester office sought dismissal. The debtor, an attorney, sought to discharge \$471,932 in credit card debt. He listed gross monthly income of almost \$17,000 and used his credit cards to pay for meals at expensive restaurants, fine wines and liquors, and expensive clothing and travel. He listed 57 credit cards on his schedules and took large advances on his credit cards in the months immediately before filing bankruptcy, including \$25,749 on one card.
- Granting a motion by the U.S. Trustee's San Antonio office, the Bankruptcy Court for the Western District of Texas dismissed the case of a married couple who sought to discharge \$595,266 in unsecured debt. Their income from the husband's medical practice exceeded \$32,000 per month, yet the debtors claimed no disposable income and argued the court should not consider their ability to repay their debts under the totality of the circumstances because they "passed" the means test. The U.S. Trustee argued the debtors' expenses were extravagant and, under the BAPCPA, courts should consider the totality of the circumstances, including ability to repay, even when the presumption of abuse does not arise under the means test.

Improper Conduct by Attorneys

Lawyers who engage in unethical conduct or provide substandard representation harm their clients and undermine the integrity of the bankruptcy system. The U.S. Trustee

monitors attorney conduct and adherence to professional standards, and takes action against unlawful activity and inadequate representation by counsel. Civil enforcement actions by the U.S. Trustee include asking the court to prohibit an attorney from appearing in bankruptcy cases and coordinating with state bar associations or other regulatory bodies as they pursue attorney disciplinary proceedings. Enforcement actions also include requesting reduction or disgorgement of debtors' attorneys' fees under 11 U.S.C. § 329 and seeking sanctions or similar remedies. (See Table 3.2 for actions against attorneys and bankruptcy petition preparers.)

During FY 2006, U.S. Trustees filed 421 motions seeking disgorgement of attorneys' fees under Section 329 and initiated 897 informal inquiries, for a total of 1,318 informal inquiries and formal court actions. Of the 340 U.S. Trustee fee disgorgement motions that were resolved by judicial decision or consent in FY 2006, U.S. Trustees were successful in 304, or 89.4 percent, resulting in disgorgement of more than \$11 million in attorneys' fees, in all chapters.

U.S. Trustees filed 191 motions and complaints for other attorney misconduct seeking sanctions other than fee disgorgement, and initiated 258 informal inquiries, for a total of 449 informal inquiries and formal court actions, in all chapters, relating to other attorney misconduct. Of the 96 U.S. Trustee motions and complaints for other attorney misconduct that were resolved by judicial decision or consent in FY 2006, U.S. Trustees were successful in 82, or 85.4 percent, resulting in more than \$1 million in monetary sanctions against attorneys, other than fee disgorgement.

In matters referred by U.S. Trustees, disciplinary bodies issued 105 disciplinary rulings, including \$82,900 in monetary sanctions. U.S. Trustees made 11 additional disciplinary referrals to state bars in FY 2006.

The following are examples of Program enforcement actions against attorney misconduct in FY 2006:

- An attorney was disbarred in Utah based upon a complaint filed by the Salt Lake City office. The attorney took filing fees from debtors, forged the debtors' signatures on applications to pay fees in installments, and filed the applications with the court. Based on such practices, the U.S. Trustee obtained fee disgorgement orders in a number of cases. When the attorney failed to obey the court orders, he was held in contempt of court. The attorney also engaged in other misconduct that included practicing law while his license was suspended, filing motions that included false statements and were not approved by his clients, and failing to appear at hearings and Section 341 meetings.
- An attorney in the District of Oregon resigned from the practice of law after the state bar filed ethics charges against him arising from five matters, including a case referred by the Portland office. In that case,

the attorney had his clients sign incomplete bankruptcy schedules and related documents under penalty of perjury, and then inserted information in those documents that he knew was incorrect. For example, the inaccurate documents did not reflect a pre-petition loan the clients made to the attorney. Before the attorney resigned from practicing law, the U.S. Trustee had obtained a judgment barring him from practicing bankruptcy law in the district.

Table 3 2: Civil Enforcement Activity Against Attorneys and Petition Preparers

Type of Action		Number of Inquiries and Formal Actions	% Actions Successful	Estimated Financial Impact
11 U.S.C. § 329 Disgorgement of Attorneys' Fees	Actions	421	89.4%	\$11 million
	Inquiries	897		
	Total	1,318		
Actions for Other Attorney Misconduct	Actions	191	85.4%	\$1 million
	Inquiries	258		
	Total	449		
Attorney Disciplinary Referrals	Actions	11	NA	\$82,900 monetary sanctions
	Inquiries	NA		
	Total	11		
11 U.S.C. § 110 Actions Against Preparers	Actions	246	97.8%	\$345,000
	Inquiries	817		
	Total	1,063		

Violations by Bankruptcy Petition Preparers

A bankruptcy petition preparer is a non-attorney who prepares debtors' bankruptcy documents for a fee. Petition preparers are governed by 11 U.S.C. § 110, which requires, among other things, that they disclose in court filings their identities and the fees they receive. Section 110 also limits the practices that petition preparers may engage in, barring them from activities such as advertising "legal" services, charging excessive fees, collecting clients' payments for court filing fees, or engaging in unfair, deceptive, or fraudulent conduct.

To curb prohibited conduct, U.S. Trustees bring civil actions to obtain orders to disgorge document preparation fees, impose fines, and enjoin petition preparers' activities.

During FY 2006, U.S. Trustees filed 246 motions and/or complaints seeking relief against petition preparers under Section 110 and initiated 817 informal inquiries, for a

total of 1,063 informal inquiries and formal court actions. Of the 313 U.S. Trustee matters that were resolved by judicial decision or consent, U.S. Trustees were successful in 306, or 97.8 percent, resulting in the issuance of 103 injunctions, the imposition of more than \$258,000 in fines, and the recovery of fees in excess of \$87,000.

The Program's enforcement actions against bankruptcy petition preparers in FY 2006 included the following:

- Granting motions filed by the San Diego office in five cases, the Bankruptcy Court for the Southern District of California ordered a petition preparer business, its principal, and an individual preparer to disgorge fees and imposed a \$10,500 fine. The U.S. Trustee argued that the preparers engaged in the unauthorized practice of law, used improper advertising, and collected court filing fee payments from debtors.
- The Bankruptcy Court for the Southern District of Florida approved a stipulation between the Miami office and a bankruptcy petition preparer who agreed to refund approximately \$19,940 in fees paid by 55 clients and to cease acting as a petition preparer in the district. Through an investigation, the U.S. Trustee discovered the preparer violated the law by failing to disclose required information.

Abuses by Creditors and Others

The Program acts on systematic or multi-jurisdictional abusive conduct by creditors and others, reaching out to the bench and bar for assistance in identifying such activity. Most two-party disputes relating to abuse by creditors are addressed either by the private trustee in the administration of the case or through litigation between the debtor and creditor. Typically, this litigation may include: objecting to claims filed by creditors who chronically or willfully fail to demonstrate they are entitled to payment as asserted in their proof of claim; seeking to avoid creditors' liens; bringing actions for creditors' failure to timely release liens; addressing violations of the automatic stay; addressing the willful failure to credit payments received under a confirmed Chapter 13 plan in the manner required by the plan; challenging improper reaffirmation agreements; pursuing violations of consumer protection laws; and challenging the unauthorized use of official court language in solicitations to consumer debtors.

In FY 2006, the first fiscal year such data was collected, the Program filed 19 enforcement actions against creditors who were not also attorneys or bankruptcy petition preparers. These matters involved false or inaccurate claims and abuse of reaffirmation procedures.



Margaret Slaughter, Gloria Simmons, St. Louis



The following is an example of the Program's enforcement activity against improper conduct by creditors and others in FY 2006:

- Ruling for the Newark office, the Bankruptcy Court for the District of New Jersey imposed sanctions of \$125,000 against a secured creditor's law firm for its use of pre-signed certifications of default, and barred further use of those certifications. On the creditor's behalf, the firm routinely filed motions seeking relief from the automatic stay in consumer bankruptcy cases. Each motion was accompanied by the creditor's certification that the consumer was in default on the loan. In approximately 250 instances, the law firm attached signature pages pre-

signed by a former employee of the creditor, thereby violating a requirement that the documents be reviewed and verified. The U.S. Trustee participated in multiple hearings relating to an order to show cause issued by the court, and argued for sanctions against the firm.

Identity Fraud and Serial Filings

Bankruptcy-related identity fraud and serial filing are two types of abusive conduct that sometimes, but not always, occur together. Bankruptcy-related identity fraud involves using false identification in the context of the bankruptcy system. It can take various forms, but one of the simplest is to file bankruptcy under a false name and/or Social Security number. Serial filing means repeatedly filing bankruptcy solely for the purpose of frustrating creditors' attempts to obtain payment, foreclose on real property, or engage in similar actions. Under certain circumstances, the Bankruptcy Code limits a debtor from refile for bankruptcy within a specified period. Some serial filers use false names and/or Social Security numbers to escape the refile limitations.

The Program requires all debtors to produce documents at the Section 341 meeting, in an effort to confirm their names and Social Security numbers. The Program also monitors its own databases and court records for evidence of abusive refile, and seeks dismissal or denial of discharge in such cases.

During FY 2006, U.S. Trustees identified 3,074 debtor identification problems. Most were resolved after the debtors amended their bankruptcy documents. U.S. Trustees filed 212 formal actions regarding debtor identification during FY 2006. Of the 66 U.S. Trustee actions regarding debtor identification matters that were resolved through dismissal, denial of discharge, denial of plan confirmation, or other relief in FY 2006, U.S. Trustees were successful in 65, or 98.5 percent.

Cases in FY 2006 involving bankruptcy-related identity fraud and/or serial filing included the following:

- The Bankruptcy Court for the Central District of California denied discharges in two separate cases in which the debtors falsely used other individuals' Social Security numbers, preventing the Chapter 7 discharge of \$698,223 in total unsecured debt and allowing the true holders of the Social Security numbers to correct their credit reports. In one case, the court denied the discharge of an individual who appeared to have used the identity of another woman over a period of years to incur debt, obtain unemployment benefits, and then file bankruptcy. In another case, the court denied the discharge of an individual who falsely swore that another man's number was his own. The Woodland Hills office objected to the discharges on the grounds that the debtors made false oaths in their bankruptcy documents and testimony.
- The Bankruptcy Court for the Northern District of Indiana granted a motion by the South Bend office to dismiss a pro se debtor's eighth Chapter 13 case filed in 10 years. One of the debtor's cases had been converted to Chapter 7, and the debtor received a discharge. The other cases were dismissed for failure to make plan payments or appear for Section 341 meetings. When the court dismissed this case, it imposed a one-year bar on refiling.

Debtor Audits

To assist in enforcement against fraud and abuse, the BAPCPA directed the Program to conduct audits to verify the accuracy, veracity, and completeness of petitions and schedules filed by individual debtors in Chapter 7 and Chapter 13. The debtor audit requirement is designed to help identify cases of fraud and abuse, improve disclosure, enhance deterrence, and provide baseline data to gauge the magnitude of fraud, abuse, and errors in the bankruptcy system. The audit requirement took effect on October 20, 2006.

During FY 2006, the Program developed procedures for implementing debtor audits. The Program competitively selected several audit firms to conduct up to 7,000 audits in FY 2007. The audit firms are to conduct random audits in at least one out of every 250 cases, and in additional selected cases in which debtors' income or expenses vary greatly from the norm. An audit firm is required to file a report with the court and, if applicable, identify any material misstatement in the debtor's bankruptcy documents. A debtor's failure to cooperate with the audit firm, or failure to reasonably explain a material misstatement identified in the audit firm's report, may result in case dismissal, denial or revocation of discharge, and possible referral for criminal investigation.

Combating Bankruptcy Crimes

Criminal enforcement continued as a primary component of the Program's strategy to combat bankruptcy fraud and abuse in FY 2006. By statute, the U.S. Trustee must refer suspected criminal activity to the U.S. Attorneys' offices for prosecution. Program staff identify instances of suspected criminal behavior and assist U.S. Attorneys in prosecuting such cases.

Under the leadership of the Criminal Enforcement Unit (CrEU), the Program continued to enhance its criminal enforcement activities in FY 2006. The Program worked with various federal law enforcement agencies to pursue a wide range of bankruptcy crimes. The scope of the Justice Department's bankruptcy fraud enforcement actions was demonstrated by the multi-district initiative called "Operation Truth or Consequences," a nationwide bankruptcy fraud sweep that culminated in the filing of charges against 78 individuals in 69 separate prosecutions in 36 judicial districts. The sweep included indictments issued on a variety of federal bankruptcy fraud and related counts within the 60-day period ending on October 18, 2006. It concluded on that date with an announcement and press conference by the Deputy Attorney General, but much of the coordination, development, and preparation took place in FY 2006.

Operation Truth or Consequences was broad in scope, protecting all facets of the bankruptcy system and all stakeholders in the system, including debtors, creditors, and the public. The fraud sweep encompassed:

- Charges filed against nine attorneys, two bankruptcy petition preparers, and one former law enforcement officer.
- Alleged concealment of more than \$3 million in assets, including a chateau in France; luxury automobiles; antiques; and wine, gun, and rare book collections.
- Alleged use of false Social Security numbers and false identities.
- Charges relating to the submission of forged documents and use of false statements.
- Alleged defrauding of individuals whose homes were subject to foreclosure.
- Alleged fraudulent receipt of government loans and benefits.
- Various other unlawful acts.

The sweep was a joint criminal enforcement effort by the U.S. Attorneys' Offices, U.S. Trustee Program, FBI, Internal Revenue Service Criminal Investigation (IRS CI), U.S. Postal Inspection Service, U.S. Secret Service, and Offices of the Inspectors General

at the Department of Housing and Urban Development and the Social Security Administration (HUD OIG and SSA OIG). (See Figure 4.1 for the scope of Operation Truth or Consequences allegations.)

The Program also created a new Internet hotline for reporting suspected bankruptcy fraud. Members of the public may report suspected bankruptcy fraud via email to USTP.Bankruptcy.Fraud@usdoj.gov.

Figure 4.1: Crimes Included in “Operation Truth or Consequences”



The Program made 925 criminal referrals in FY 2006. It used an automated Criminal Enforcement Tracking System to track the number of criminal referrals made by Program staff and to analyze the types of referred violations.

In many cases where criminal charges are brought, Program lawyers directly prosecute cases or assist the prosecution teams. Four veteran career prosecutors within the CrEU, plus approximately 25 attorneys in field offices across the country who have been designated as Special Assistant U.S. Attorneys, are available to try cases involving bankruptcy crimes.



The CrEU also provides extensive training to Program staff, private trustees, and federal law enforcement personnel. During FY 2006, CrEU staff participated in more than 50 sessions at which over 1,500 people were trained, including special agents of the FBI, IRS CI, U.S. Postal Inspection Service, U.S. Secret Service, and Offices of the Inspectors General at HUD, SSA, the Department of Homeland Security, and the Department of Agriculture.

In addition, the Program participates in bankruptcy fraud working groups with members of U.S. Attorneys' offices and law enforcement agencies. Working group members collaborate to investigate and prosecute bankruptcy fraud and related criminal conduct.

A new statutory section included in the BAPCPA, 18 U.S.C. § 158, requires every U.S. Attorney's office to designate a prosecutor and every FBI field office to designate an agent who will assume primary responsibility for bankruptcy fraud cases. This further strengthens existing working groups by creating formal points of contact, and provides a foundation for establishing working groups where none exist.

Additionally, in FY 2006 the CrEU and other staff contributed articles for a special issue of the Executive Office for U.S. Attorneys' publication *USA Bulletin*. This issue, which focused on the BAPCPA, was published in August 2006 and is posted at http://www.usdoj.gov/usao/eousa/foia_reading_room/foiamanuals.html.

Complex Schemes

Virtually any type of criminal conduct can arise in connection with a bankruptcy case. A bankruptcy filing may be the last violation in a series of inter-connected crimes including tax fraud, bank fraud, mail fraud, securities fraud, money laundering, embezzlement, real estate fraud, and perjury. The Program may coordinate as necessary with other federal agencies to investigate such cases. (See Table 4.1 for examples of referrals relating to complex schemes.)

Table 4 1: Program Referrals Relating to Complex Schemes

Type of Allegation	Number of Referrals	Percent of Referrals
Bankruptcy Fraud Scheme	285	30.8
Perjury/False Statement	267	28.9
Tax Fraud	92	9.9
Mortgage/Real Estate Fraud	64	6.9
Mail/Wire Fraud	36	3.9
Bank Fraud	19	2.1

Note: A criminal referral may include multiple allegations.

The following are examples of complex cases in FY 2006 involving multiple crimes:

- Two men pleaded guilty in the District of Arizona in connection with their theft of inventory and diversion of proceeds from a Chapter 11 debtor corporation to another company formed by one of the men. The president of the debtor corporation pleaded guilty to wire fraud and false oath in bankruptcy, and the other man admitted being an accessory after the fact to concealment in bankruptcy. The two men used more than \$300,000 of cheese inventory belonging to a customer of the debtor corporation, and used the debtor corporation’s facilities and equipment to process cheese that they packaged and sold under a different label. They diverted the sale proceeds to the new corporation. The Phoenix office referred the case and assisted with the investigation. The Regional Fraud Coordinators for Regions 14 and 18 also provided assistance.
- The chief executive officer of a health benefits management company pleaded guilty in the District of New Jersey to two counts of conspiracy, admitting that he used his company to embezzle funds from the labor union he founded. The health benefits management company operated the union’s health fund. The CEO and co-conspirators funneled money from the health fund under the guise of increased membership fees, and paid themselves through various corporate entities. The embezzlement caused the health fund to file bankruptcy. The Newark office and the Chapter 7 trustee administering the health fund’s bankruptcy case assisted in the investigation.

Real Estate and Mortgage Fraud

The Program works closely with other federal agencies such as the FBI and HUD OIG to pursue real estate and mortgage fraud in bankruptcy cases. These fraud schemes

threaten the integrity of the bankruptcy system as they take advantage of consumers in financial distress and creditors with legitimate claims. Bankruptcy-related real estate and mortgage fraud schemes usually fall into three general categories: straw buyer schemes, rescue fraud, and equity skimming. (See Table 4.1 for examples of referrals relating to complex schemes, including real estate and mortgage fraud.)

A “straw buyer” purchases multiple properties with false loan origination information provided by the operator of the scheme. The operator promises the straw buyer that he or she has no mortgage payment responsibilities, and pays the straw buyer a cash fee for involvement in the scheme. The operator collects rent from tenants, but fails to make mortgage payments and directs the straw buyer to file bankruptcy to delay foreclosure on the property.

Rescue fraud preys upon owners or tenants who are facing foreclosure or eviction. The operator charges a fee to provide services that purportedly help victims avoid foreclosure or eviction. These services generally include advising the victim to file bankruptcy, which temporarily halts collection activity by the lender or landlord. Typically, the victim believes that the operator paid or negotiated with the lender or landlord, and that foreclosure or eviction has been halted permanently. The operator does not fully advise the victim about the effects of filing bankruptcy. Furthermore, the operator often counsels the victim not to disclose the operator’s involvement in the bankruptcy filing.

Equity skimming is similar to rescue fraud, but the scheme operator acquires an interest in or title to the property without assuming the mortgage. Methods for acquiring ownership include quit claim deeds, land contracts, and fractional interests. The operator may put a management company in control of the property, collect rent, and—when the lender attempts to foreclose—deed all or fractional interests to the management company, which files bankruptcy.

The following are among the cases involving bankruptcy-related real estate and mortgage fraud in FY 2006:

- A debtor was sentenced in the Southern District of Florida to 60 months in prison and three years supervised release for fraudulently obtaining more than \$1.4 million in mortgage loans and concealing properties in his two bankruptcy cases. The debtor previously pleaded guilty to one count of conspiracy, along with a co-defendant, who was sentenced to one year and one day in prison, three years supervised release, and payment of \$1 million in restitution. The debtor submitted false financial information to obtain the mortgage loans, and laundered many of the loan funds through the co-conspirator’s bank accounts. The Miami office assisted in the investigation and prosecution.
- In the Eastern District of Virginia, a man who engaged in the

business of “foreclosure rescue” pleaded guilty to conspiracy to commit bank fraud. The man conspired with an individual Chapter 11 debtor and other parties to fraudulently induce a bank to loan him approximately \$4 million, apparently to purchase the debtor’s residence. In reality, the transaction was structured to allow the debtor to retain the residence and collect additional payments, and to yield commissions for the man and others. In exchange for his role in the sham transaction, the man received a commission of approximately \$359,700. The bank lost more than \$1 million. The Alexandria office referred the matter, and the Assistant U.S. Trustee served as a Special Assistant U.S. Attorney during the investigation and prosecution. This case was included in Operation Truth or Consequences.

- In the District of Utah, two men pleaded guilty to charges arising from their equity skimming scheme. Through two companies that they operated, the men devised a scheme to purchase for nominal amounts more than 20 homes that were in foreclosure and were subject to mortgages insured by the Federal Housing Authority. The men promised the homeowners they would make their mortgage payments, find investors to buy their properties, split any profits made from the homes, and save their credit. Instead, the men rented out the properties until they were foreclosed upon, and kept the rents for their own use. As part of the scheme, the men placed their companies in Chapter 7 bankruptcy to forestall foreclosure on the properties and continue collecting rent. The Assistant U.S. Trustee in Salt Lake City served as a Special Assistant U.S. Attorney in the case.

Concealment, False Statements or Documents, Identity Fraud, and Bust-Outs

Other bankruptcy-related crimes include concealing bankruptcy estate assets, making false statements, creating and/or submitting false documents, engaging in identity fraud, and engaging in credit card “bust-outs.” (See Table 4.2 for examples of referrals relating to these crimes.)

Some debtors try to conceal assets from the bankruptcy trustee and creditors by failing to disclose assets on their bankruptcy documents and by making false statements about their assets at the Section 341 meeting or in bankruptcy court. The debtor may fail to list assets in the bankruptcy documents, undervalue assets, mis-characterize assets so they appear less valuable, or secretly transfer assets before or after filing bankruptcy. Assets that debtors may try to conceal include real property, bank accounts, inheritances, stocks and other interests in businesses, jewelry, art work, items in storage units, and intangible assets such as accounts receivable, personal injury lawsuits, and life insurance policies.



The creation and submission of false documents strikes at the core of the integrity of the bankruptcy court system, as it often involves falsifying the signature of a bankruptcy judge, bankruptcy clerk, or other court official. A debtor or former debtor may manufacture a false notice of automatic stay or order of bankruptcy discharge to stop foreclosure, eviction, wage garnishment, or collection proceedings, or may generate documents purportedly signed by a lawyer, creditor, or other person to convince a potential lender to extend credit to the debtor or former debtor.

Bankruptcy-related identity fraud includes using a false name or Social Security number to file bankruptcy, whether that name or SSN is fabricated or is assigned to another individual. A debtor may use a false identity in a bankruptcy case to avoid restrictions on refiling within a particular period. The Program often works in tandem with the SSA OIG in cases involving use of one or more false or stolen SSNs.

In a credit card bust-out, a debtor attempts to discharge high credit card charges incurred with no intent to repay. Particularly if the bust-out is part of an organized scheme, the individual might begin by making false statements on the credit card application—giving a false name and/or Social Security number, false employment history, and inflated salary information to qualify for a higher credit limit. Typically, purchases and cash advances are incurred within a two- or three-month period, with charges sometimes incurred on multiple credit card accounts on the same day. A bankruptcy case is eventually filed to discharge the debt. The U.S. Secret Service, which is charged with investigating credit card fraud, may coordinate with the Program in pursuing credit card bust-outs.

Table 4 2: Program Referrals for Concealment, Identity Fraud, Bust-Outs, and Other Crimes

Type of Allegation	Number of Referrals	Percent of Referrals
False Oaths, Statements	478	51.7
Concealment of Assets	381	41.2
Identity Theft/Use of False or Multiple SSNs	193	20.9
Forged Documents	70	7.6
Credit Card Bust-Outs	28	3.0

Note: A criminal referral may include multiple allegations.

The following are among the cases in FY 2006 that involved these types of bankruptcy crimes:

- A husband and wife pleaded guilty to bankruptcy fraud and money laundering in the Southern District of California. In their bankruptcy case, the couple concealed more than \$1 million in domestic and offshore accounts, a Rolls Royce, a Jaguar, a sailing yacht, and a \$155,000 promissory note. When the Chapter 7 trustee discovered the promissory note, the couple created a fictitious claim against the bankruptcy estate to obtain proceeds from the sale of the note. The two were arrested in Mexico and extradited to the United States. The husband was ultimately sentenced to 33 months in prison, three months in a halfway house, and three years supervised release; the wife was sentenced to six months in prison and three years supervised release. The San Diego office and the Regional Bankruptcy Fraud Coordinator in Los Angeles assisted in the investigation and prosecution. The San Diego office also obtained revocation of the couple's bankruptcy discharge.
- In the Northern District of Ohio, a man was sentenced to 46 months in prison and ordered to pay \$37,438 in restitution, based upon his guilty plea to charges including bankruptcy fraud, bank fraud, and mail fraud. The man engaged in a scheme in which he obtained the identities and Social Security numbers of others, and then made credit purchases using these identities. When the man filed Chapter 7 bankruptcy, he did not reveal that he had used these names or disclose assets purchased using these identities, including furs and jewelry. A trial attorney from the Cleveland office served as a Special Assistant U.S. Attorney during the prosecution of the case.
- Eleven related individuals pleaded guilty in the Eastern District of Michigan to multiple charges, including bankruptcy fraud, bank fraud, conspiracy, money laundering, and other related charges, in connection with a large-scale credit card bust-out scheme that defrauded creditors and the bankruptcy court. As part of the scheme, the individuals filed bankruptcy to discharge approximately \$3 million in total credit card debt. The individuals initially processed credit card charges knowing the charges were improper and would not be paid. Some individuals further incurred charges on credit cards and then paid for the charges with checks that were returned due to insufficient funds. Before the credit card issuers learned that the checks were not supported by sufficient funds, the individuals made additional charges on the credit cards. They filed bankruptcy seeking to discharge the fraudulently incurred credit card debt. The Detroit office referred several of the cases for prosecution.

- Two sisters pleaded guilty in the District of Delaware to conspiracy to improperly convert government funds to their own use. The sisters concealed their mother's death and continued to receive Social Security and veterans' benefits paid to the mother. One sister filed Chapter 7 bankruptcy and the other filed Chapter 13 bankruptcy, failing to disclose their interests in the bank account into which their mother's benefits were deposited. The Wilmington office referred the matter for investigation and prosecution. This case was included in Operation Truth or Consequences.

Crimes by Bankruptcy Professionals

On occasion, bankruptcy attorneys, bankruptcy petition preparers, bankruptcy trustees, and/or their employees engage in criminal activities to enrich themselves at the expense of debtors, creditors, and other participants in the bankruptcy proceeding. Crimes include embezzling from the bankruptcy estate, helping debtors conceal assets, and engaging in activities that abuse the integrity of the bankruptcy process. (See Table 4.3 for examples of referrals relating to bankruptcy professionals.)

Table 4 3: Program Referrals Relating to Bankruptcy Professionals

Type of Allegation	Number of Referrals	Percent of Referrals
Embezzlement	36	3.9
Disregard of Law by Preparer	6	0.6
Professional Fraud	4	0.4

Note: A criminal referral may include multiple allegations.

The following are among the cases in FY 2006 that involved crimes by bankruptcy professionals:

- A bankruptcy attorney pleaded guilty in the Eastern District of California to forging a bankruptcy court order. The attorney represented a client whose car was improperly repossessed by a creditor. The attorney failed to act on the matter for more than seven months, despite the client's repeated requests. He then provided the debtor with a forged order, purportedly signed by the bankruptcy court, stating that the creditor improperly took the vehicle and the debtor was entitled to sanctions of \$20,000. The attorney was sentenced to six months in prison and 24 months supervised release. He also resigned from the practice of law. The Fresno office assisted in the criminal investigation.

- A courtroom deputy clerk for a bankruptcy judge in the Northern District of Illinois pleaded guilty to attempted extortion after soliciting payment from a debtor who was working undercover for the FBI. The courtroom deputy clerk offered to help the debtor “off the record” by calling his lender. She took him into the courtroom and made a fictitious phone call, making it appear as if she negotiated with the lender to stop the sale. She then took the debtor to her office, where he gave her money. The Chicago office referred the matter to the U.S. Attorney, and worked with the U.S. Attorney, FBI, and bankruptcy clerk to develop the undercover scenario. An Assistant U.S. Trustee and the Regional Criminal Coordinator in Chicago assisted with the investigation and prosecution.
- A former Chapter 7 trustee was sentenced in the District of Puerto Rico for embezzling from a bankruptcy estate, after he admitted transferring estate property into his own name. The trustee told the debtor and creditors that he surrendered the debtor’s truck to the leasing company because the payoff amount exceeded its value. In reality, he negotiated down the payoff amount with the leasing company, paid the reduced amount from a personal bank account, and converted title to his name. The San Juan office referred the matter and assisted in the investigation and prosecution.

Chapter 11 Reorganization

The Program participates in Chapter 11 cases filed by individuals and entities that range from small sole proprietorships to giant multinational conglomerates. Without substituting its business judgment for that of parties with a monetary stake in a case, the Program focuses on matters concerning the administration of the estate, such as the appointment of trustees and examiners, as necessary; the appointment of official committees of creditors and equity holders; the retention of professionals to serve in the case and their fees; proposed executive compensation plans; and, particularly in smaller cases, the review of disclosure statements and plans to reorganize, and in some cases liquidate, the debtor.

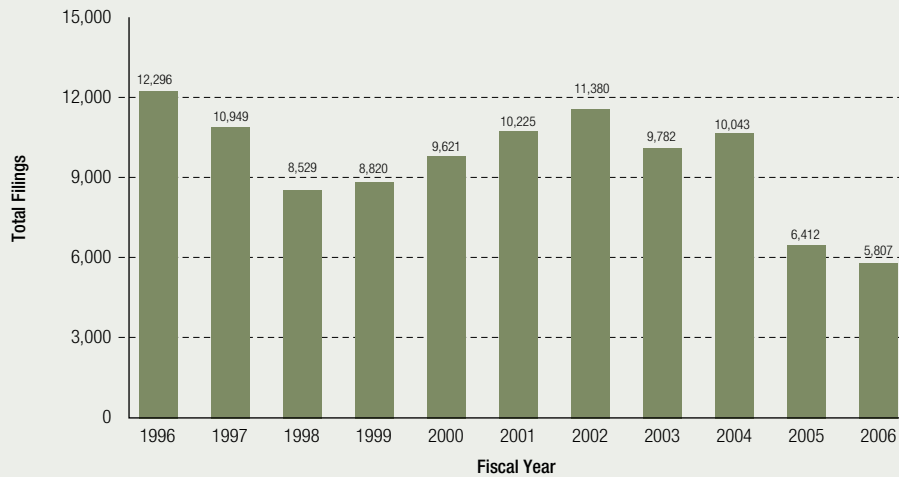
In FY 2006, the Program began to implement new provisions in the BAPCPA aimed at imposing greater transparency, objectivity, and certainty on the Chapter 11 process. These changes enhanced the oversight of businesses in Chapter 11 and increased management accountability. Examples are the BAPCPA's provisions limiting key employee retention plans, requiring motions to appoint a trustee in certain circumstances, and establishing tighter deadlines for filing a disclosure statement and plan. These provisions helped to correct an imbalance that had evolved favoring incumbent management at the expense of accountability to creditors, equity holders, and the public interest.

The largest entity to file Chapter 11 bankruptcy in FY 2006 was commodities brokerage Refco, Inc., which listed over \$33 billion in assets at the time of filing. Power company Calpine Corp. was the next-largest filer, reporting over \$27 billion in assets at the time of filing. In addition, a number of filings by corporations in the automotive and aircraft parts industries were among the largest cases pending in FY 2006, requiring continued oversight by the Program.

Chapter 11 debtors in the automotive parts industries included Delphi Corp., Dana Corp., and Tower Automotive, Inc. Of those debtors, Delphi Corp. and Dana Corp. filed in FY 2006, while Tower Automotive filed in FY 2005. When filing bankruptcy, Delphi Corp. reported \$16.6 billion in assets, Dana Corp. reported \$9 billion, and Tower Automotive reported \$2.8 billion.

Figure 5.1: Chapter 11 Filings Nationwide

Fiscal Years 1996 – 2006 (Totals do not include Alabama & North Carolina)



U S Trustees' Duties

U.S. Trustees perform certain tasks in Chapter 11 cases. (See Table 5.1 for examples of Program activities in Chapter 11 cases.) These include the following:

- Reviewing “first day” motions and applications—emergency requests made early in a bankruptcy case—to ensure that the requested relief is necessary and tailored to the circumstances of the case.
- Conducting initial debtor interviews to discuss the debtor’s financial situation and reasons for filing the case, consider the debtor’s plans for reorganization, and advise the debtor of its fiduciary obligations and the U.S. Trustee’s role in case administration.
- Appointing official committees that represent the interests of unsecured creditors and other interest holders in the case.
- Ensuring that official committees provide their constituencies with access to non-confidential information that is available to the committee.
- Requiring appropriate protective orders before committee members may participate in claims or stock trading.
- Conducting the first meeting of creditors, at which the debtor or its representative is examined under oath by the U.S. Trustee, creditors, or other parties in interest.

- Appointing a trustee or examiner upon court order if certain statutory conditions are met.
- Monitoring the employment and compensation of professionals who serve in the case and receive payment from the bankruptcy estate.
- Reviewing proposed executive compensation plans, whether denominated as retention, severance, or incentive plans, to ensure they satisfy the requirements of the Bankruptcy Code.
- Engaging in oversight to ensure that required schedules, statements, monthly operating reports, and other documents are timely filed and that the debtor manages money and assets in a manner consistent with the Bankruptcy Code and with its fiduciary duty to creditors.
- Reviewing reorganization plans and disclosure statements filed by parties to determine whether they provide adequate information and meet statutory requirements.
- Taking action that prevents undue delay and is in the best interests of creditors, such as filing a motion to dismiss the case, convert the case to a Chapter 7 liquidation, or appoint a trustee.
- Pursuing civil penalties for fraudulent or abusive conduct.
- Referring cases of apparent criminal fraud to the U.S. Attorney for investigation and criminal prosecution.

Table 5 1: Actions in Chapter 11 Cases

Type of Action	Number of Inquiries and Formal Actions
Actions to Appoint Trustee or Examiner	88
Objections to Employment/Compensation of Professionals	4,150
Objections to Disclosure Statements	658
Objections to Plan Confirmations	364
Motions to Dismiss or Convert	3,225

The BAPCPA set forth new duties for U.S. Trustees to monitor “small business” Chapter 11 cases, and in FY 2006 there were 1,447 filings designated as such. The new law defined a small business debtor as a debtor and any debtor affiliates that have in the aggregate no more than \$2 million of non-contingent, liquidated secured and unsecured debt, and that are not in the business of owning or operating real property. In a small business case, the U.S. Trustee must conduct an initial debtor interview to inquire into the debtor’s

viability and business plan, and explain the financial reporting requirements. In addition, the U.S. Trustee must review and monitor the debtor's progress toward confirmation. The U.S. Trustee may conduct on-site visits with reasonable written notice to the debtor. Many of these activities have been common practice even before the BAPCPA under the Program's general authority to supervise case administration.

Appointment of Trustees and Examiners

Although the debtor usually remains in possession of its assets while reorganizing in Chapter 11, the U.S. Trustee or another party may move for the appointment of a trustee, and the court shall order that appointment, if cause exists or if the appointment is in the best interest of creditors, equity holders, and others with an interest in the estate. "Cause" includes fraud, dishonesty, incompetence, or gross mismanagement of the affairs of the debtor by current management, either before or after the commencement of the case. A trustee "steps into the shoes" of the debtor's operating management and acts as a fiduciary for all interested parties.

To increase accountability to creditors, equity holders, and the public, Bankruptcy Code Section 1104(e) requires the Program to file a motion for appointment of a trustee based upon "reasonable grounds to suspect" that the incumbent board, chief executive officer, chief financial officer, or board members selecting those officers participated in "actual fraud, dishonesty, or criminal conduct in the management of the debtor or the debtor's public financial reporting." Section 1104(e) was a new provision under the BAPCPA.

Alternatively, the U.S. Trustee or another party may seek, and the court may order, the appointment of an examiner to investigate and report on the debtor's conduct, assets, liabilities, business operations, and financial conditions. An examiner's investigation may replace multiple investigations and discovery and provide a focused, unbiased, and independent report that serves the interests of creditors and the public by telling the story of the company's financial condition. In certain cases, the appointment of an examiner is mandated by the Bankruptcy Code if an examiner is requested by a party in interest. The debtor's management remains in place when an examiner is appointed.

While an examiner is generally appointed where there have been questionable management activities, unexplained irregularities in the debtor's financial history or practices, or other special factors, the statute permits the court flexibility to tailor the examiner's role to the needs of a specific case. During FY 2006, the Program explored whether examiners could be appointed in major Chapter 11 cases to help control burgeoning professional fees and expenses. Although the U.S. Trustee's motion in the Delta Air Lines case seeking an examiner for these purposes was not successful, the



Leonora Long, St. Louis

Program continued to explore this and other possible means to moderate the expansion of professional fees in major Chapter 11 cases.

If the court orders the appointment of a trustee or examiner, the U.S. Trustee, after consultation with the parties and subject to court approval, appoints a disinterested person to serve in that capacity. During FY 2006, U.S. Trustees filed motions to appoint a trustee or examiner in 63 cases. During the year, 59 such motions were decided, with 53 granted and six denied. In addition, out-of-court efforts by U.S. Trustees in seven cases produced successful results without the necessity of filing a formal motion for appointment of an examiner or trustee.

Cases in which the U.S. Trustee appointed a trustee or examiner in FY 2006 included the following:

- The New York office appointed an examiner in the cases of Refco, Inc., and its affiliated debtors after its motion was granted by the Bankruptcy Court for the Southern District of New York. The Refco cases arose from substantial allegations of serious financial statement fraud by members of Refco's pre-petition management. The motion was based on the Bankruptcy Code provision that mandates the appointment of an examiner in a case with more than \$5 million in publicly held debt. The examiner was directed to investigate pre-petition conduct, fraud, and other financial activity that might give rise to claims on behalf of the bankruptcy estate.
- The Baltimore office successfully moved the Bankruptcy Court for the District of Maryland for an order directing immediate appointment of a trustee in the case of a check cashing business, where there were allegations of a massive check-kiting and fraud scheme that had defrauded banks of more than \$11 million. Just before the hearing on the U.S. Trustee's motion, the debtor consented to the appointment of a trustee. At the hearing, however, the debtor argued that the appointment should be deferred until after the pending sale of substantially all its assets. The U.S. Trustee successfully opposed the deferment, arguing that if cause existed to appoint a trustee, the Bankruptcy Code did not permit delaying the appointment for practical or economic considerations, particularly amid allegations of fraud and incompetence.

Employment of Professionals

The Program monitors applications for the retention of professionals who serve in bankruptcy cases—including attorneys, accountants, auctioneers, financial advisors, turnaround specialists, and real estate brokers—to ensure full disclosure of potential

conflicts that may affect a professional's disinterestedness and compliance with the law. In addition, the Program monitors fee applications for reasonable compensation.

During FY 2006, 4,150 formal actions and informal inquiries initiated by U.S. Trustees regarding employment and compensation of professionals in both Chapter 7 and Chapter 11 cases resulted in professional fee reductions and disgorgements totaling over \$112 million.

Examples of cases involving the employment of professionals included the following:

- Program staff from the EOUST spearheaded an investigation that uncovered a management consultant's unacceptable billing practices and billing irregularities. The consultant originally sought a \$25 million success fee for its work in the case of Enron Corp. However, as a result of the Program's efforts and disclosures to the Bankruptcy Court for the Southern District of New York, the management consultant entered into a stipulated agreement that reduced the success fee by \$12.5 million.
- The Bankruptcy Court for the District of Delaware approved a \$1.75 million settlement between the Wilmington office and a law firm that served as special counsel for the debtor, an automotive restraints supplier. The firm agreed to disgorge the funds to address allegations that it failed to disclose connections and had a disqualifying conflict of interest. The firm was employed to prosecute allegations of fraud and misdealing against a third party from whom the debtor purchased assets. Several years after the debtor's reorganization plan was confirmed and took effect, the U.S. Trustee learned that an attorney who worked on the litigation was previously employed at a law firm that provided estate planning services to key insiders of the debtor on the eve of bankruptcy. The firm involved in the settlement did not disclose the attorney's prior employment when it applied for retention as special counsel.

Appointment of Official Committees

U.S. Trustees appoint official committees that represent the interests of unsecured creditors and, if appropriate, appoint additional committees of those holding other interests in the case. For example, U.S. Trustees may appoint committees of trade creditors or equity security holders. In addition, when a debtor seeks to modify or not to pay certain retiree benefits or when it is otherwise appropriate, U.S. Trustees will appoint a committee of retired employees, upon court order. For example, U.S. Trustees appointed retiree committees in nearly all of the large airline and automotive industry cases.



After appointment of an official committee, U.S. Trustees exercise general oversight to ensure the committee remains representative and properly performs its duties. When events warrant, U.S. Trustees may modify the composition of a committee or appoint an additional committee.

Under new requirements created by the BAPCPA, committees must share information with creditors of the type represented by the committee. In addition, committee members owe fiduciary duties to their constituency that preclude them from trading on non-public information obtained through their committee membership. To enforce this duty, U.S. Trustees insist that committee members who desire to trade in claims against, or securities of, a debtor do so only after receiving court approval

of the trading procedures and circumstances. U.S. Trustees review the requests of committee members for such trading orders to ensure that they are appropriate for the case and that they provide for protections, such as “ethical walls” and compliance personnel, to prevent those who make trading decisions from obtaining non-public information from committee members. U.S. Trustees object to proposed trading orders that lack these protections and that create a risk of breach of the committee members’ fiduciary obligations.

The following is an example of U.S. Trustee oversight of creditors’ committees:

- In the cases of Refco, Inc., and its affiliated debtors, the New York office bifurcated the original creditors’ committee to resolve conflicts that had hampered its operation. Various parties later credited this action with helping to set the stage for a global settlement of issues in these cases. Also in the Refco cases, the creditors’ committee initially sought an order excusing it from the information sharing requirement. After the U.S. Trustee objected, the parties entered into negotiations culminating in court approval of a protocol for sharing non-confidential information, which has served as a model for committees in similar cases.

Management Accountability

The BAPCPA included a number of provisions to increase management accountability in Chapter 11 cases, to preserve and enhance the value of estate assets for potential distribution to creditors. Included among these were clear new restraints on the compensation of executives in bankruptcy cases that significantly changed the rules for granting retention bonuses and severance packages paid from estate assets. Bankruptcy Code Section 503(c) strictly limits the payment of retention and severance compensation to insiders and requires debtors to show that other payments of compensation outside the ordinary course of their business are justified by the facts and circumstances of the case. The Program closely monitors compensation and bonus requests to assure they do not circumvent these requirements and limits.

The following are examples of U.S. Trustee activities in enforcing Section 503(c) during FY 2006:

- In the first reported decision under Section 503(c), the Bankruptcy Court for the Southern District of New York in the Dana Corp. case rejected a Chapter 11 debtor's initial incentive and compensation plan for its president and chief executive officer and five executives. The New York office objected because the debtor had not sought approval for the plan under Section 503(c) and the statutory requirements were not satisfied. The court held that Section 503(c) applied because the proposal was retention-based, and concluded that the proposal did not pass muster because the debtor did not meet its burden of proof under the statute.
- The U.S. Trustee appealed a decision of the Bankruptcy Court for the District of Delaware approving, over the objection of the Wilmington office, a proposed compensation plan for the debtor's top management. The bankruptcy court held that it could approve the plan as long as the primary purpose of the plan was not retention. The U.S. Trustee argued that the purpose of the proposed compensation plan, which nominally awarded bonuses to members of top management who met incentive goals, was in fact primarily retentive because the goals were so easily achieved as to be illusory.

Reorganization Oversight

The U.S. Trustee reviews reorganization plans and disclosure statements filed by parties to determine whether they provide adequate information and meet statutory standards for approval and confirmation. During FY 2006, U.S. Trustees filed 408 objections to disclosure statements and 237 objections to confirmation of plans of reorganization or liquidation. Objections to disclosure statements were sustained in 300 cases, while confirmation was denied or plans were voluntarily amended in 152 cases after a formal

objection had been filed. In 102 cases, debtors voluntarily amended their reorganization plans to remedy concerns raised through informal action by the U.S. Trustee.

The following are examples of the U.S. Trustees' objections to plan confirmation:

- The Wilmington office objected to confirmation of a Chapter 11 debtor's fourth modified plan, under which the debtor's largest shareholder would contribute capital to the bankruptcy estate, retain the corporate shell, and retain its interest in equity. The plan also provided liability releases for numerous non-debtor third parties, and an inappropriate discharge for the debtor. Based on the totality of the circumstances, the U.S. Trustee argued the plan was not proposed in good faith. Among other things, many items that the plan defined as "retained business assets"—enabling the debtor to continue in business—were sold in the first months of the case. Rather than contest the objection, the debtor revised the plan to a liquidating plan and eliminated the third party releases and discharge provision.
- The New York office opposed a debtor's proposed plan that was facially defective because, among other things, it impermissibly capped payments to certain creditors holding estimated claims and reduced payments to a particular class of creditors if a majority in that class voted against the plan. After the U.S. Trustee objected, the debtor removed both of these provisions.

The U.S. Trustee also takes action to prevent undue delay in Chapter 11 cases by, for example, filing a motion to dismiss a case or convert a case to a Chapter 7 liquidation. During FY 2006, U.S. Trustees filed 2,429 motions to dismiss or convert Chapter 11 cases. During the same period, 1,917 motions to dismiss or convert were granted and 50 were denied.

Finally, the U.S. Trustee takes action to preserve and enhance the value of estate assets for potential distribution to creditors. As discussed previously, the U.S. Trustee reviews and, if appropriate, objects to professional fee applications and employee retention plans. The U.S. Trustee also reviews applications filed by others for the payment of administrative expense claims.

The following are examples of additional U.S. Trustee oversight activities in Chapter 11 cases:

- The Dallas office successfully moved to convert to Chapter 7 the Chapter 11 case of a debtor who, in a pre-petition lawsuit joined by the Texas Attorney General, was found to have committed fraud and to have taken excessive and unauthorized compensation while serving as a director of a charitable foundation. During the three years before

he filed bankruptcy, the debtor was paid more than \$2.7 million, but the only assets he disclosed to the bankruptcy court and creditors were his \$1.4 million home and a car, both of which were gifts from his mother. The Bankruptcy Court for the Northern District of Texas granted the U.S. Trustee's motion to convert the case, finding that an independent fiduciary was needed to investigate the debtor's financial affairs and to pursue transferred assets, and that the debtor was unlikely to be able to confirm a Chapter 11 plan.

- The Wilmington office successfully objected to payment of a \$12.5 million administrative expense claim asserted by a consortium of investors for allegedly making a “substantial contribution” in the case of a building materials manufacturer. The investors' consortium competed unsuccessfully to provide a backstop, or guarantee, for the debtor's \$1.8 billion equity rights offering, which was a key feature of its proposed reorganization plan. The consortium argued that its participation in a three-way competition over who would backstop the rights offering resulted in a \$33 million reduction in associated transaction fees. The consortium failed to tie that claim to actual costs, such as attorney fees incurred by competing investors. After the U.S. Trustee objected, the Bankruptcy Court for the District of Delaware denied the consortium's claim.

New Provisions for Consumer Debtors

Under new Section 111 of the Bankruptcy Code, as created by the BAPCPA, the U.S. Trustee is responsible for approving eligible providers of pre-bankruptcy credit counseling and post-bankruptcy debtor education. Individual debtors generally must seek credit counseling and debtor education from these providers as a condition of filing bankruptcy and receiving a discharge of debts. These provisions are designed to ensure that consumer debtors are aware of their options before filing bankruptcy and have more financial education before leaving bankruptcy.

As with means testing, there were positive signs in FY 2006 that the BAPCPA's credit counseling and debtor education provisions were workable. The Program's first priority in approving pre-bankruptcy credit counselors was to screen out those who might seek to defraud debtors. The Program developed approval and monitoring criteria with substantial assistance from the Internal Revenue Service and the Federal Trade Commission. Subsequently, the Program also commenced post-approval on-site reviews of credit counseling agencies, known as "Quality Service Reviews," to better verify applicants' qualifications. The Program's approval and monitoring process allowed appropriate scrutiny of applicants, while permitting the approval of a sufficient number of providers to serve debtors.

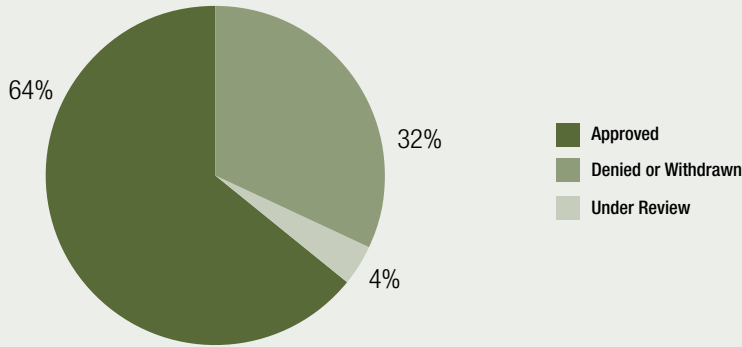
Application Process

By the end of FY 2006, the Program had received nearly 700 initial applications from credit counselors and debtor educators. At that time, about 64 percent of those applications were approved, 32 percent were either denied or voluntarily withdrawn, and 4 percent were under review. Moreover, nearly all of the credit counselors and debtor educators that received probationary six-month approval reapplied for 12-month approval. As of September 30, 2006, there were 153 approved credit counseling agencies and 275 approved debtor education providers.

Applications for approval were generally processed within a few weeks of receipt, and Program staff worked with applicants where there were deficiencies to collect additional information as needed. Common reasons for denial of approval as a credit counselor included lack of an independent board of directors, improper financial tie-ins with third party vendors, and failure to turn over documents related to an on-going audit by the Internal Revenue Service. Common reasons for denial of approval as a debtor education provider included inadequate course materials, failure to employ trained personnel, and fee disclosure issues.

During FY 2006, the Program promulgated an Interim Final Rule governing the credit counseling and debtor education approval process. This regulation provided the U.S. Trustees with greater latitude in setting requirements and protecting debtors against unscrupulous providers.

Figure 6.1: Status of Credit Counseling and Debtor Education Provider Applications at Year-End



Enforcement

In FY 2006, U.S. Trustees filed 2,343 motions to dismiss pursuant to 11 U.S.C. § 707(a) for failure to file credit counseling certificates. To reduce dismissals for lack of knowledge of the credit counseling requirement, the Program proposed a new Exhibit D to the bankruptcy petition. The form would provide notice to all debtors, especially those filing without legal representation, of the requirement to obtain credit counseling before filing bankruptcy.

The form uses a simple check-the-box format that makes clear the debtor’s obligation to file a credit counseling certificate when filing bankruptcy. The Judicial Conference of the United States approved the new Official Form, which took effect on October 1, 2007.

Information and Outreach

Throughout FY 2006, the Program continued to provide information and educational outreach regarding the BAPCPA’s credit counseling and debtor education requirements. Materials posted on the Program’s Web site included: the complete application materials for credit counseling agencies and debtor education course providers seeking U.S. Trustee approval; lists of approved credit counseling agencies and debtor education course providers in each judicial district, including non-English language providers; and the answers to frequently asked questions regarding the credit counseling and debtor education requirements.

The Program also coordinated with the Federal Trade Commission to develop a brochure entitled “Before You File for Personal Bankruptcy: Information About Credit Counseling and Debtor Education.” In addition, Program personnel attended conferences and seminars to speak about the new requirements and the approval process. Audiences included credit counseling industry groups, consumer groups, and bankruptcy professionals.

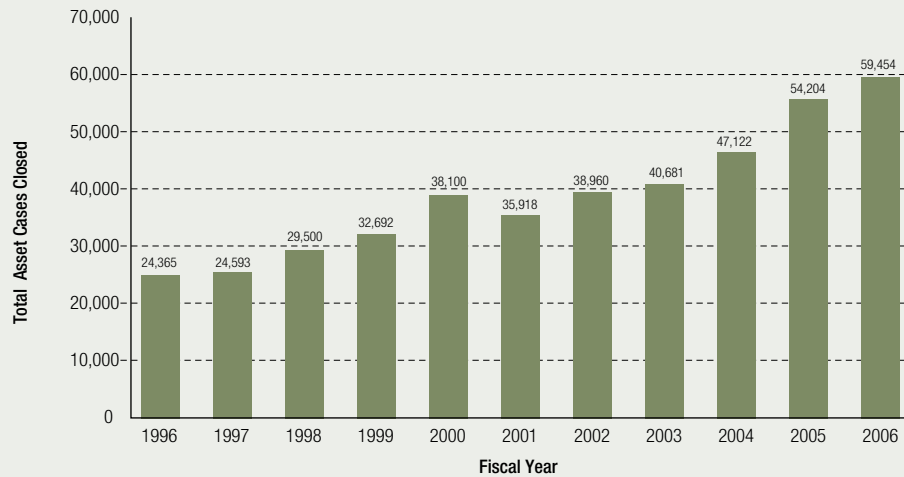
Private Trustees

The Program appoints and supervises approximately 1,400 private trustees, who are not government employees, to administer bankruptcy estates and distribute payments to creditors in cases filed under Chapters 7, 12, and 13. The Program trains trustees and evaluates their performance, reviews their financial operations, ensures the effective administration of estate assets, and intervenes to investigate and recover the loss of estate assets when embezzlement, mismanagement, or other improper activity is suspected or alleged.

In FY 2006, trustees administering Chapter 7 cases closed more than 59,000 asset cases, generating nearly \$2.6 billion in funds. Trustees administering Chapter 13 cases collected more than \$5.5 billion in FY 2006, averaging over \$29 million per trustee, with the largest trustee operations administering over \$150 million. Trustees administering Chapter 12 cases collected \$30.4 million, averaging more than \$676,000 per trustee.

Figure 7.1: Chapter 7 Asset Cases Closed

Fiscal Years 1996 – 2006



The Program works closely with the various bankruptcy trustee associations to improve case administration and to address other matters of mutual interest. In FY 2006, Program staff and private trustees continued to work together to ensure the consistent application of, and compliance with, the bankruptcy laws and the Program's policies and practices.

Legislative Implementation for Trustees

As in the previous year, during FY 2006 many of the Program's trustee oversight activities focused on helping the trustees implement the new responsibilities arising under the BAPCPA. The Program continued to work with trustees to implement means testing and to resolve issues regarding the collection and storage of documents such as personal tax returns and payment advices. The Program provided guidance to trustees on the additional information to be obtained from debtors in the form of revised handbook guidelines, and worked with trustees to implement the debtor audit provisions of the BAPCPA. The Program continued to coordinate with trustees and software providers on the development of protocols to collect data elements required in the uniform final reports mandated by the new law.



The Program's efforts included establishing working relationships with other government agencies and organizations to provide resources and guidance to trustees. For example, the new legislation specified that, under certain circumstances, a Chapter 7 trustee is responsible for performing the obligations of an employee benefit plan administrator. The Program coordinated with the Employee Benefits Security Administration of the Department of Labor to develop training materials and guidance to help trustees carry out these responsibilities.

The BAPCPA also directed that debtors' private information be protected from unauthorized access, in order to shield it from identity theft. To protect the information set forth on debtors' tax returns, during FY 2006 the Program issued guidelines explaining trustees' responsibilities for protecting and disposing of those returns.

Figure 7.2: Total Disbursements in Chapter 7 Cases

Fiscal Years 1996 – 2006

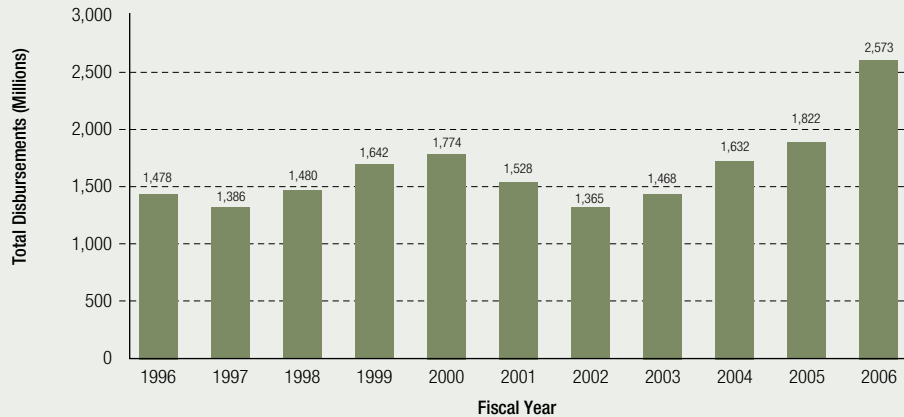
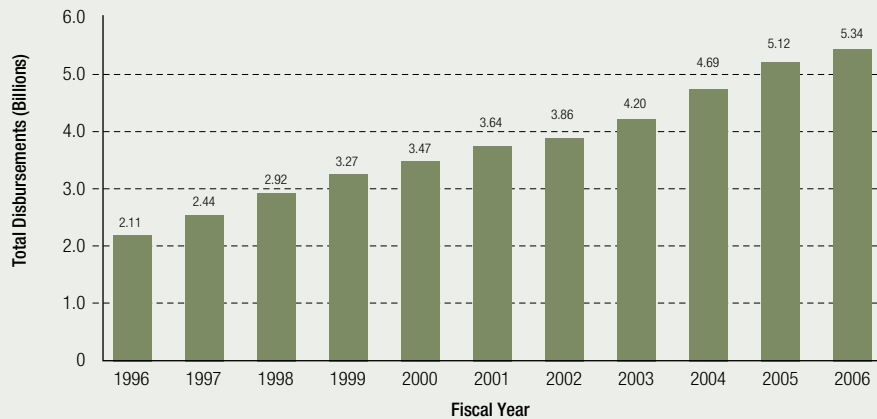


Figure 7.3: Total Disbursements in Chapter 13 Cases

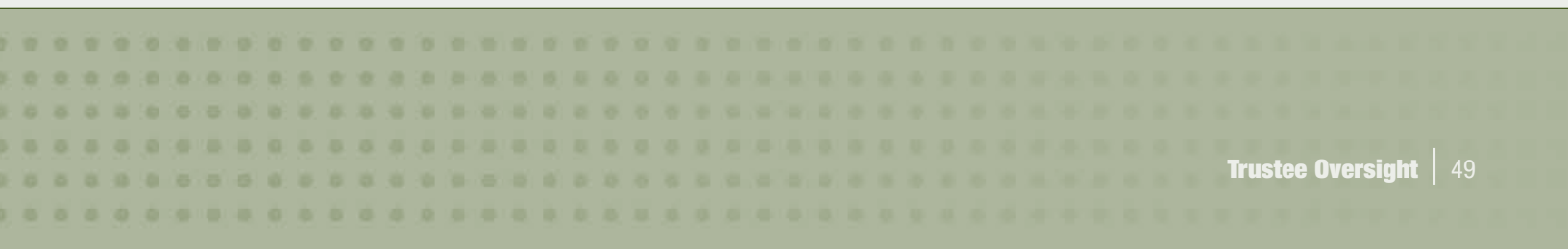
Fiscal Years 1996 – 2006



Other Activities

The Program continued its other aspects of trustee supervision not related to implementation of the BAPCPA.

The Program coordinated with the Internal Revenue Service on the use of a new protocol that enables Chapter 7 trustees to obtain debtors' federal tax refunds directly from the IRS, to be administered with other assets of the bankruptcy estate. The Program also worked with the IRS and the Chapter 13 trustees to automate the processes by which the trustees receive debtors' tax refunds and transmit debtors' tax payments.



Program Activities

The Program engages in planning, evaluation, research, and communications to direct its actions and share information in pursuit of its mission. Research activities further an understanding of the bankruptcy system. Evaluation is used to improve performance and ensure accountability in the Program's policies and practices. Communications expand general knowledge about the bankruptcy system and the Program's activities.

Planning

The Program's strategic plan reflects a commitment to maintaining a high-performance litigating component of the Department. Pursuant to the plan, the Program's primary goals are to:

- Protect the integrity of the nation's bankruptcy system.
- Promote effectiveness and efficiency within the nation's bankruptcy system.
- Maintain operational excellence that achieves desired results through continuous improvements in administration and services.

The strategic plan is posted on the Program's Internet site at www.usdoj.gov/ust/eo/ust_org/mission.htm. The plan discusses the Program's mission, vision, values, goals, challenges, evaluations, and partnerships, and provides a foundation for future strategic planning and continuous improvements.

Evaluation

Each year, the Office of Management and Budget (OMB) evaluates the efficiency and effectiveness of selected federal agencies. In FY 2005, the Program was evaluated for the first time under the OMB's Program Assessment Rating Tool (PART), a rigorous review of an agency's performance and management that is a centerpiece of the President's Management Agenda. The Program received a score of 90 and a rating of "effective"—the highest rating of any component of the Department of Justice that had been rated. The Program ranked among the top 15 percent of all government agencies rated.

In FY 2006, the Program continued to monitor and improve its PART performance measures, which are reported quarterly. Future reviews include a re-examination of the Program's performance measures following the implementation of the BAPCPA, as well as independent evaluations of Program operations.



Research

The Program commenced a study, conducted by RAND Corp., to examine fraud, abuse, and error in the bankruptcy system. The study was coordinated by the National Institute of Justice, an evaluation component of the Department. Participants included scholars, practitioners, federal agency representatives, and others.

The Program also began various studies and reports mandated under the BAPCPA, including a pilot study of a personal financial management training program. The BAPCPA directed the EOUST to develop the training curriculum and materials, and to conduct a pilot study in six judicial districts. The EOUST must evaluate its new curriculum and materials, and evaluate a sample of existing consumer education programs such as those provided by the credit industry, Chapter 13 trustees, and consumer counseling groups.

The BAPCPA also directed the Program to submit a report and recommendations to Congress on the new law's use of IRS standards for determining expenses and the impact of that use on debtors and the bankruptcy courts. Further, it directed the Program to provide a report and recommendations to Congress on the new law's definition of household goods with respect to the avoidance of non-possessory, non-purchase money security interests in household goods, and the impact of that definition on debtors and the bankruptcy courts.

In addition to engaging in studies, the Program routinely uses data to evaluate its performance at the regional and field office levels. In FY 2006, it helped develop and enhance a number of data bases to compile, verify, and analyze performance indicators.

Communications

After Congress passed the BAPCPA, members of the press turned to the Program for information on the provisions of the Act and the Program's implementation plans. The Program answered scores of media inquiries about its responsibilities for means-testing, approval of credit counseling agencies and debtor education course providers, small business Chapter 11 cases, debtor audits, and related topics.

In FY 2006, the Program continued to respond to inquiries and provide information about the implementation of the BAPCPA. The Program maintained an area on its Internet site with posted materials that include:

- An overview of the Program's new responsibilities under the BAPCPA.
- Application materials for credit counseling agencies and debtor education course providers seeking U.S. Trustee approval.
- Lists of approved credit counseling agencies and debtor education course providers in each judicial district.
- Answers to frequently asked questions regarding approval of credit counseling agencies and debtor education providers.
- Data required for the means-testing calculation, including Census Bureau data on state median incomes, Internal Revenue Service expense standards, and Chapter 13 administrative expense multipliers by judicial district.
- Contact information regarding holders of domestic support obligation claims and state child support enforcement agencies, for use by Chapter 7 and Chapter 13 trustees.
- Information on debtor audits, including audit procedures and standards as well as contracting procedures.

In addition to providing information about the BAPCPA and its implementation, the Program engaged in outreach activities to increase public knowledge about the nation's legal and bankruptcy systems. Staff participated in a variety of outreach activities that included hosting foreign officials, promoting and participating in financial literacy education programs, giving speeches, and publishing articles.

Program staff also coordinated with the Department's Office of Legislative Affairs (OLA) to respond to inquiries regarding bankruptcy-related legislative initiatives. Responses on behalf of the Program were prepared and submitted through OLA to requests and inquiries from Congressional committees, members of Congress, and their staffs.

Automated Systems

In FY 2006, the Program continued to refine and enhance the new information technology applications necessary to implement the BAPCPA, including a Means Test Review System and a Debtor Audit System. The Program implemented an enhanced Chapter 11 Quarterly Fees Information Collection System (FICS) and an on-line application to collect professional time records. It also upgraded the telecommunications and office automation infrastructure in more than 100 locations.

Legislative Implementation

The BAPCPA requires the collection of new types of data and the creation of new automated processes to implement its provisions. In FY 2006, the Program worked closely with the Administrative Office of the U.S. Courts and the bankruptcy courts on technology-related initiatives designed to implement the BAPCPA as efficiently as possible. For example, the Program continued to coordinate with the courts to establish a new mandatory data-enabled forms standard for the official bankruptcy forms. This standard will permit data tags to be embedded in a “portable document format” (PDF) document before the document is filed with the court. The data tags allow the computer system automatically to route information into identified categories, expediting case analysis. For example, data tags permit computerized categorization of above- and below-median Chapter 7 debtors for means testing purposes, identification of Chapter 11 debtors who qualify as small business debtors, and electronic collection of data from Chapter 11 monthly operating reports.

In FY 2005, the Program created an automated system to track the new means test review process mandated under the BAPCPA. This included updating the daily bankruptcy court download process to receive data and documents for means test review. In FY 2006, over 2 million documents were downloaded electronically from the courts via the new process, for review by Program staff. The new means test review system was refined and enhanced throughout the year to meet staff needs.

Also in FY 2005, the Program implemented an automated system to track the review of applications for approval as a pre-bankruptcy credit counseling agency or a pre-discharge debtor education course provider. In FY 2006, the Program released a national database accessible via a secured Internet Web site to control the issuance of certificates of completion of credit counseling and debtor education. More than 900,000 certificates were issued in FY 2006. Program staff can cross-check information in this national database against the Program’s case management database to verify the authenticity of a certificate filed with the court.

To carry out the BAPCPA’s requirement for debtor audits, the Program developed an automated system to facilitate efficient audit review processes, central management, selection of cases for audit, receipt of electronic reports from auditors, tracking

of auditor performance and status, management reports, and collection of statistical data required by the BAPCPA.

Electronic Case Filing

Nationwide, the bankruptcy courts completed their move to an electronic case filing system (ECF) for the submission of documents to, from, and within the courts. In FY 2006, the Program coordinated with eight bankruptcy courts that converted to ECF.

Other Activities

During FY 2006, the Program enhanced the Chapter 11 FICS database to allow for real-time access to case data. The Program also released new on-line software to capture professional time spent on priority Program civil and criminal enforcement efforts. This data will continue to assist the Program with performance measurement.

The Program completed a multi-year effort to modernize the nationwide office automation system, which included upgrading more than 1,300 PCs and 100 servers. Program staff also worked closely with Department staff to upgrade to a new telecommunication network. Over 100 sites were migrated to the new technology, which provided improved performance for access to email and shared services.



National Bankruptcy Training Institute

The Program offers a variety of training designed to enhance the knowledge and skills of its employees. Most sessions are conducted at the National Bankruptcy Training Institute (NBTI), which is located at the National Advocacy Center (NAC) in Columbia, South Carolina. The NAC is a cooperative partnership of the NBTI, the United States Attorneys' Office of Legal Education, and the National District Attorneys Association that provides continuing professional learning in state-of-the-art classrooms, computer labs, courtrooms, and television-video production studios.

During FY 2006, the NBTI hosted approximately 900 attendees from the Program, including managers, attorneys, para-professionals, and administrative and technical staff. A number of courses focused on BAPCPA implementation and advocacy skills training for Program attorneys. In addition, one or more employees from every field office received training on the BAPCPA's debtor audit and credit counseling provisions.

The following courses were offered at the NBTI in FY 2006:

- Administrative Officers Conference
- Appellate Advocacy
- BAPCPA Implementation Update
- BAPCPA for Support Staff
- Civil Litigation Skills
- Criminal Bankruptcy Fraud
- Information Technology
- Litigation Support Training
- Management Training

BAPCPA Outreach

The BAPCPA was a far-reaching revision of the 1978 Bankruptcy Code. The Program considered it crucial not only to provide comprehensive training to Program staff but also to engage in outreach to the bankruptcy community to educate and hear concerns relating to the new law's implementation. One goal of this outreach effort was to help ensure that consumer practitioners understand the means test and other new requirements so debtors may receive the best legal representation possible.

Various Program offices provided local training sessions on the means testing and debtor audit provisions and other aspects of the BAPCPA. The training was designed to

supplement formal continuing legal education programs by providing training for hundreds of consumer bankruptcy attorneys and their staff members, including training on completing new bankruptcy forms. Around the country, Program staff also participated in local bar association and similar meetings to explain and discuss new responsibilities under the BAPCPA.

The following are examples of local training sessions on BAPCPA provisions:

- Program staff in Region 13, which consists of Nebraska, Missouri, and Arkansas, presented workshops on the new means testing provisions for consumer bankruptcy attorneys and their staff members. The workshops were designed to supplement formal continuing legal education programs by providing personalized training for attorneys and staff, including training on completing the new means testing forms. Several hundred attorneys and their staff members attended the workshops.
- In Region 3, which includes New Jersey, Delaware, and Pennsylvania, Program staff offered outreach programs to help debtors' counsel understand the means testing and debtor audit procedures.
- Program staff in Region 17, which encompasses northern and eastern California and Nevada, worked to develop a series of means testing workshops after noting certain recurring errors by local practitioners.



Jerry Jensen, Trish Fahey, Omaha

Training for Private Trustees

In FY 2006, the Program offered one training session for recently appointed Chapter 7 trustees and one training session for experienced trustees at the NAC. Approximately 100 trustees attended these courses, which are designed to enhance the trustees' skills, promote uniform standards of trustee performance, and supplement training on civil and criminal enforcement.

National Advocacy Center, Columbia, South Carolina



Training for Other Professionals

In addition to its training activities at the NAC, the Program offers regional and local presentations to inform and educate about the bankruptcy system and Program activities. U.S. Trustees and Program staff often speak to law enforcement agencies, bar associations, professional organizations, law schools, other government agencies, and other groups.

Examples of the Program's training outreach activities in FY 2006 include the following:

- The Chicago office conducted a bankruptcy seminar at the request of the Cook County Public Guardian to assist the Public Guardian in protecting the interests of its wards. During the previous months, the Chicago office had pursued a number of civil enforcement actions dealing with financial abuse of the elderly. In one case, an individual dissipated the property of his elderly aunt while acting as her guardian, and then filed bankruptcy to discharge the debt associated with his actions. In another case, an individual used a power of attorney to incur debts in the name of an elderly person and then filed bankruptcy in that person's name. Twenty-nine attorneys from the Public Guardian's office attended the U.S. Trustee presentation, which covered topics including the bankruptcy process, the automatic stay, fraudulent transfers, and objections to discharge and dischargeability.
- The Regional Bankruptcy Fraud Coordinator in Los Angeles and a trial attorney from the San Diego office spoke at the California District Attorneys' Conference on Real Estate Fraud in San Diego. They

discussed bankruptcy issues and real estate fraud, including the role of the U.S. Trustee Program, bankruptcy crimes, the BAPCPA's effect upon real estate matters, and the trial and sentencing in a real estate equity skimming case in which the trial attorney testified as an expert witness.

- Dozens of regional Internal Revenue Service agents who specialize in bankruptcy and insolvency issues met with staff from the Dallas office to learn more about bankruptcy fraud. Topics included indicators of fraud and abuse, the use of supporting evidence, drafting effective referrals, and the Program's civil enforcement efforts.
- An Assistant U.S. Trustee and a paralegal from the Houston office participated for the first time in meetings of the Houston Mortgage Fraud Task Force. The U.S. Trustee's office joined the task force along with representatives from the FBI, U.S. Attorney, HUD OIG, IRS CI, SSA OIG, and state and local agencies including the county district attorney's office.

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UNITED STATES TRUSTEE PROGRAM
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Annual Report of Significant Accomplishments

Fiscal Year 2006



