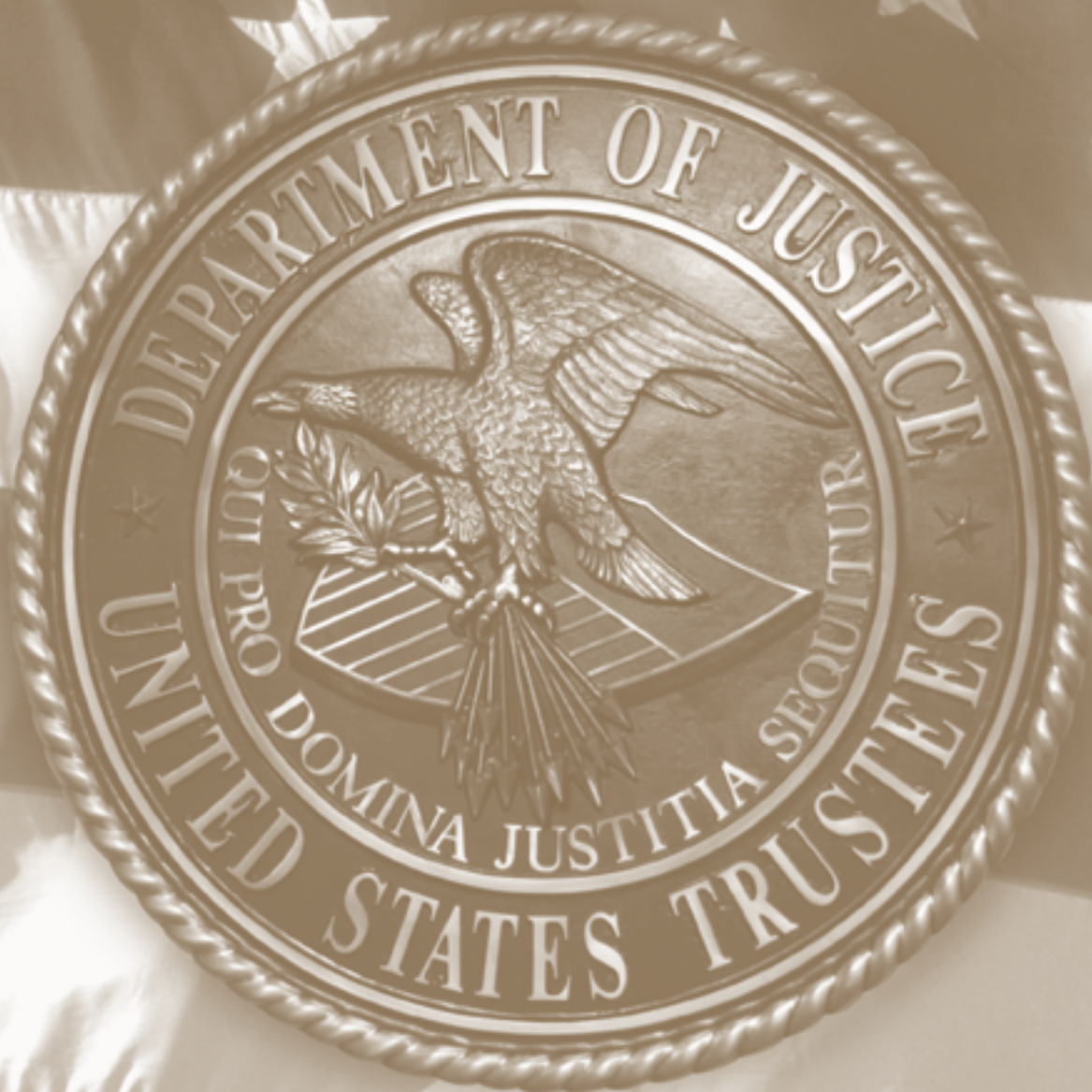


U.S. Department of Justice
U.S. Trustee Program



UNITED STATES TRUSTEE PROGRAM

ANNUAL REPORT OF SIGNIFICANT ACCOMPLISHMENTS

FISCAL YEAR 2004

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TABLE OF CONTENTS

MISSION STATEMENT	v
MESSAGE FROM THE ACTING DIRECTOR	vi
EXECUTIVE SUMMARY	vii
CHAPTER 1. THE UNITED STATES TRUSTEE PROGRAM	
Mission of the United States Trustee Program	1
Largest Federal Caseload	1
Bankruptcy Chapters	1
Chapter 7	1
Chapter 11	2
Chapter 12	2
Chapter 13	2
CHAPTER 2. ORGANIZATION AND ADMINISTRATION	
Executive Office for U.S. Trustees	5
Regions and Field Offices	5
Budget and Appropriations	6
CHAPTER 3. CIVIL ENFORCEMENT	
Combating Fraud and Abuse	9
Civil Enforcement Actions	9
Denial or Revocation of Discharge	9
Dismissal for ‘Substantial Abuse’	12
Improper Conduct by Attorneys	13
Violations by Bankruptcy Petition Preparers	14
Serial Filings and Identity Fraud	15
Abuses by Creditors and Others	17
CHAPTER 4. CRIMINAL ENFORCEMENT	
Fighting Bankruptcy Crimes	21
Criminal Enforcement Actions	21
Concealment of Assets	21
Crimes by Attorneys and Bankruptcy Petition Preparers	22
Credit Card ‘Bust-Outs’ and Identity Fraud	24
Creation of False Documents	25
Other Crimes	26
Multi-Agency Working Groups	28
CHAPTER 5. LITIGATION IN CHAPTER 11 BUSINESS REORGANIZATIONS	
U.S. Trustee Duties in Chapter 11 Cases	31
Appointment of Trustee or Examiner	32
Employment and Compensation of Professionals	34
Preventing Delay and Preserving Assets	36

CHAPTER 6. TRUSTEE OVERSIGHT	
Chapter 7 Trustees	39
Appointment	39
Oversight Duties.	39
Chapter 12 and Chapter 13 Trustees	40
Appointment	40
Oversight Duties.	40
Computer Security	41
Trustee Training	41
CHAPTER 7. PLANNING, EVALUATION, AND COMMUNICATIONS	
Planning	43
Performance Measurement	44
Evaluation	44
Data Collection and Statistics	44
Debtor Audit Pilot Project	45
National Study on Fraud, Abuse, and Error	45
Communications	45
Congressional Affairs	45
Public Affairs	45
Financial Education Outreach	46
CHAPTER 8. INFORMATION SYSTEMS AND TECHNOLOGY	
Criminal Enforcement Tracking System	49
Automated Case Management System	49
Electronic Case Filing	49
Digital Recording	50
CHAPTER 9. TRAINING	
National Bankruptcy Training Institute	53
Training for Private Trustees	53
Training for Other Professionals	54
CHAPTER 10. APPENDIX	
United States Trustee Program Map of Regions and Offices	57
United States Trustee Program Nationwide Office Locator	58
Civil Enforcement Actions FY 2004	59
Total Bankruptcy Filings Nationwide FY 1994-2004	60
Total Bankruptcy Filings by Chapter FY 1994-2004	60
Chapter 11 Filings Nationwide FY 1994-2004	61
Chapter 11 Quarterly Fee Collections FY 1994-2004	61
Chapter 7 Asset Cases Closed FY 1994-2004	62
Chapter 7 Cases, Total Disbursements FY 1994-2004.	62
Chapter 13 Cases, Total Disbursements FY 1994-2004	63
Bankruptcy Filings Relative to Population by State FY 2004	64
Peak Fiscal Years for Bankruptcy Filings by State	64
Standing Trustee Pledge of Excellence.	65
Chapter 7 Panel Trustee Pledge of Excellence.	66



Mission Statement

The United States Trustee Program's mission is to promote integrity and efficiency in the nation's bankruptcy system by enforcing bankruptcy laws, providing oversight of private trustees, and maintaining operational excellence.



Message from the Acting Director

In Fiscal Year (FY) 2004, the United States Trustee Program moved forward with new achievements as it carried out its mission of promoting integrity, efficiency, and excellence in the nation's bankruptcy system.

During FY 2004, the third year of the Program's National Civil Enforcement Initiative, the dedicated men and women of the Program continued to pursue fraud and abuse in the bankruptcy system. Under the Initiative, the Program seeks civil remedies against debtors who engage in fraud or who abuse the bankruptcy system, and takes action to protect consumer debtors from misconduct by attorneys, bankruptcy petition preparers, creditors, and others who seek to take advantage of the debtors' financial difficulties. Since FY 2002, the Program's skilled and experienced personnel have increased the number and quality of enforcement actions while maintaining a success rate of over 90 percent. In FY 2004, the Program initiated over 52,400 informal inquiries and formal civil enforcement and related activities, resulting in more than \$521 million in potential benefit to creditors.

FY 2004 also marked the second year of the Program's Criminal Enforcement Unit, which assists staff as they coordinate with federal investigative agencies and United States Attorneys' offices on criminal case referral, development, and prosecution. Since the Unit was established in FY 2003, its members have trained Program staff in fraud detection, investigation, and referral; helped build relationships with prosecutors and others in the criminal justice system; and participated in criminal cases as Special Assistant United States Attorneys. Moreover, as in the civil enforcement arena, the Program has enhanced its data collection to track criminal enforcement actions and measure results.

While devoting increased attention to civil and criminal enforcement, Program employees also carried out a range of other activities in FY 2004 that included monitoring Chapter 11 business reorganizations, supervising private trustees, engaging in strategic planning and measurement, improving and updating automation systems, participating in public outreach and education, and providing professional development training for employees and private trustees.

I am grateful to the Attorney General, the Bush Administration, and the Congress for their support of the Program and its mission, and to our Program's talented employees who strive to make the nation's bankruptcy system fair, effective, efficient, and free from fraud and abuse.

I invite you to learn more about the United States Trustee Program by reading our *Fiscal Year 2004 Annual Report of Significant Accomplishments*.

A handwritten signature in black ink, reading "Clifford J. White, III". The signature is stylized and includes a flourish at the end.

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

Executive Summary

During Fiscal Year 2004 the U.S. Trustee Program pressed ahead with its transformation to a high-performance litigating component of the Department of Justice. The Program concentrated on increasing its effectiveness in civil and criminal enforcement, taking a balanced and fair approach to combating fraud and abuse in the bankruptcy system while fine-tuning the standards used to measure enforcement performance.

Civil enforcement continued as a paramount focus of the Program. U.S. Trustees initiated more than 52,400 informal inquiries and formal civil enforcement and related actions, resulting in potential benefits to creditors exceeding \$521 million. That amount included more than \$192.5 million in unsecured debt barred from discharge due to Program activity to obtain denial, revocation, or waiver of discharge, and more than \$275 million in unsecured debt not discharged as a result of Program activity relating to dismissal for substantial abuse. To protect consumers, the Program's took action against bankruptcy petition preparers that resulted in more than \$3 million in fines imposed and fees recovered, and the issuance of 249 injunctions. Moreover, U.S. Trustees obtained disgorgement of more than \$4.3 million in attorneys' fees and over \$309,000 in monetary sanctions against attorneys.

Criminal enforcement also increased significantly as the Program's Criminal Enforcement Unit of veteran prosecutors entered its second year. The Program continued to coordinate with other law enforcement entities to detect and prosecute a diverse range of bankruptcy-related criminal conduct, including concealment of assets, crimes by attorneys and bankruptcy petition preparers, credit card bust-outs, identity fraud, and the creation of false documents. This coordination included participation in bankruptcy fraud working groups, where Program personnel serve as a resource for information, education, and training.

The Program effectively supervised the private trustees who administer cases filed under Chapters 7, 12, and 13. In FY 2004, trustees administering Chapter 13 repayment plans and Chapter 12 family farmer cases collected more than \$5 billion, and trustees administering Chapter 7 liquidations closed more than 47,000 asset cases to generate \$1.63 billion in funds.

The Program monitored Chapter 11 business reorganizations, appointing trustees and examiners where necessary to protect the bankruptcy estate and taking other steps to help ensure timely and efficient case processing. The Program began developing its strategic plan for FY 2005 through FY 2010, with the primary goals of protecting the integrity of the nation's bankruptcy system, promoting effectiveness and efficiency within the nation's bankruptcy system, and maintaining operational excellence. In addition, existing information technology systems crucial to maintaining high performance within the Program were modernized while new systems were pilot-tested or launched, and professional training initiatives were expanded to include the first national training session for Chapter 7 trustees.

CHAPTER 1

THE UNITED STATES TRUSTEE PROGRAM



Photo 1: Peter Lumaghi, Paul Randolph, Gloria Simmons, Vanessa Denton

Photo 2: U.S. Capitol

Photo 3: Glyn Miller, Carolyn Cole

Mission of the United States Trustee Program

The mission of the United States Trustee Program is to promote integrity and efficiency in the nation's bankruptcy system by enforcing bankruptcy laws, providing oversight of private trustees, and maintaining operational excellence.

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The Program is a litigating component of the U.S. Department of Justice. It carries out Objective 2.6 of the Department of Justice's Strategic Plan for Fiscal Years 2003-2008: "Protect the integrity and ensure the effective operation of the Nation's bankruptcy system." The Department's Strategic Plan provides these four strategies to achieve that objective:

- 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.

Largest Federal Caseload

Every year since 1996, more than one million individuals and businesses have filed bankruptcy, making the bankruptcy caseload the largest in the federal court system. By law, the U.S. Trustee has standing to participate in every bankruptcy case within the Program's jurisdiction. To help protect the public interest in maintaining an effective and efficient bankruptcy system, the U.S. Trustee participates in almost all cases either directly or through trustee oversight.

In FY 2004, U.S. Trustees processed 1,539,741 new bankruptcy case filings. More than 72 percent of those cases were filed as Chapter 7 liquidations (1,114,622); approximately 27 percent were Chapter 13 repayment plans (414,747); and less than one percent were Chapter 11 reorganizations (10,043). The remaining cases were filed under Chapter 9, Chapter 12, or ancillary to a foreign proceeding.

Bankruptcy Chapters

The federal Bankruptcy Code appears in Title 11 of the United States Code, beginning at 11 U.S.C. § 101. Most cases are filed under either Chapter 7, 11, 12, or 13.

Chapter 7

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

Chapter 11

Chapter 11 bankruptcy 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.

Chapter 12

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

Chapter 13

Chapter 13, often called wage-earner bankruptcy, is used by individual consumers to reorganize their financial affairs under a repayment plan that must be completed generally within three to five years. To be eligible for Chapter 13 relief, a consumer must have regular income and may not have more than a specified amount of debt.

CHAPTER 2

ORGANIZATION AND ADMINISTRATION



Photo 1: U.S. Courthouse, Seattle

Photo 2: Donald Walton; Clifford J. White, III; W. Clarkson McDow, Jr.; Jeffrey Miller; Dan Casamatta; Roberta DeAngelis

The U.S. Trustee Program consists of an Executive Office in Washington, D.C., and 21 regions operating out of 95 offices across the country, covering 88 judicial districts in 48 states, the District of Columbia, and four territories.

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Executive Office for U.S. Trustees

The Executive Office for U.S. Trustees (EOUST) provides comprehensive policy and management direction to the U.S. Trustees and their staff, as well as administrative support and central coordination to the regional and field offices. The EOUST is headed by a Director who reports to the Associate Attorney General. There are approximately 75 permanent employees in the EOUST, which includes the following offices and units.

- **Office of General Counsel** coordinates the Program's litigation activities and provides legal counsel to the Program. It advises U.S. Trustees and Assistant U.S. Trustees in order to ensure consistency in the Program's legal positions, coordinates responses on significant legal issues, decides whether to take appeals of court decisions to district courts or bankruptcy appellate panels, and coordinates with other Department of Justice components where necessary.

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

- **Office of Research and Planning** engages in strategic planning, analyzes management and case data, conducts research, and provides public information.

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

- **Information and Technology Unit** supports the Program's automation activities.

- **Civil Enforcement Unit** assists with and coordinates the Program's civil enforcement activities.

- **Criminal Enforcement Unit** assists with and coordinates the Program's criminal enforcement activities.

Regions and Field Offices

The Program's 21 regions are defined pursuant to 28 U.S.C. § 581(a). Each region is headed by a U.S. Trustee who is appointed by the Attorney General and whose basic authority is conferred under 28 U.S.C. § 586. By statute, the six judicial districts in Alabama and North Carolina do not participate in the Program. In those districts, bankruptcy case administration is overseen by a court official called a Bankruptcy Administrator.

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

The number of Program offices in each region varies. Most states within the jurisdiction of the Program have at least one Program office. Many offices are responsible for handling cases in more than one location. Program staff appear

in court in more than 160 locations around the country, and conduct or oversee proceedings in about 280 other sites.

Each Program office is headed by an Assistant U.S. Trustee. The Program's role in bankruptcy administration melds aspects of law and financial analysis, and Program staff include trial attorneys, bankruptcy analysts, paralegals, and administrative, technical, and support staff. At the conclusion of FY 2004, the Program was staffed by 104 Assistant U.S. Trustees, 230 trial attorneys, 214 bankruptcy analysts, 237 paralegals, and 310 administrative, technical, and support staff.

Office caseloads and the type of cases filed vary significantly. During FY 2004, the New York City office handled the largest number of Chapter 11 filings, followed by Dallas, Newark, and Wilmington; Cleveland had the largest number of Chapter 7 filings, followed by Chicago and Detroit; and Atlanta, Memphis, and Dallas had the largest number of Chapter 13 filings.

Budget and Appropriations

The U.S. Trustee Program is funded through fees paid in bankruptcy cases. No general revenues are appropriated to support the Program.

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

Funds allocated to the Program are deposited into the U.S. Trustee System Fund, established in the United States Treasury. Congress makes annual appropriations to the Program from this fund, and revenues in excess of the amount appropriated by Congress remain in the fund.

The Program's appropriation for FY 2004 totaled \$173.6 million, with 1,198 authorized positions. Approximately 86 percent of the budget was needed to cover costs relating to personnel and facilities, including rent for the offices and for approximately 450 meeting rooms where the first meetings of the debtors and creditors are held as required under 11 U.S.C. § 341.

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 2003-2008 Strategic Plan. In addition, the Program's management decisions reflect the President's Management Agenda, issued in August 2001, and the Attorney General's Management Initiatives, announced in November 2001.



CHAPTER 3

CIVIL ENFORCEMENT



Photo 1: Darryl Lewis, Paris Duffy

Photo 2: Sam Wray

Photo 3: Beth Kramer

Combating Fraud and Abuse

One of the Program's top priorities is to combat fraud and abuse in the bankruptcy system through civil enforcement. The Program seeks civil remedies against debtors who engage in fraud or who abuse the bankruptcy system, and takes action to protect consumer debtors from misconduct by attorneys, bankruptcy petition preparers, creditors, and others who seek to take advantage of the debtors' financial difficulties.

One of the Program's top priorities is to combat fraud and abuse in the bankruptcy system through civil enforcement.

The Program pursues actions under 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. §§ 109(g) and 349(a) for abusive repeat filings and other bad faith filings.
- Federal Rule of Bankruptcy Procedure 9011 for sanctions against professionals.

To help ensure that civil enforcement actions are coordinated across the country, a Civil Enforcement Resource Team of more than 20 attorneys, analysts, and paralegals with extensive experience in civil enforcement share their expertise with other Program staff. Team members assist with civil enforcement issues and cases nationwide; answer questions from staff members; provide forms and examples; advise

on specific cases; provide training; make public presentations; and assist with litigation, including multi-jurisdictional litigation against those who violate the bankruptcy laws in more than one judicial district.

As part of its civil enforcement activities, the Program encourages "best practices" that improve bankruptcy administration by fostering the provision of more accurate information and making bankruptcy proceedings more transparent. In FY 2004, the Program proposed changes to the Federal Rules of Bankruptcy Procedure and the Official Bankruptcy Forms that would require consumer debtors to disclose additional information and documents that are in their possession, such as tax returns, pay stubs, and bank statements. This additional information and documentation would help the private trustees confirm the accuracy of the debtors' schedules, determine whether assets exist, and assess whether the debtor is entitled to a discharge. The information and documentation are already required under many local bankruptcy rules, standing court orders, or local practice.

The rule changes would enhance the provision of accurate information, facilitate processing of bankruptcy cases by private trustees, and help prevent abuse of the bankruptcy system. The rule making process, which is conducted by the United States Judicial Conference's Advisory Committee on Bankruptcy Rules, will continue beyond FY 2004.

Civil Enforcement Actions

Denial or Revocation of Discharge

A primary reason an individual files for bankruptcy is to obtain a bankruptcy "discharge," which releases the debtor from personal liability for payment of certain debts and prevents creditors from taking action to collect those debts. Chapter 7 is designed to give a fresh start to the



“Often, the information that leads to a complaint to deny discharge is provided by an outside source, such as a creditor or case trustee. Here, the information was developed solely by our staff. Bankruptcy Analyst Julie Smoak, who was conducting a routine evaluation of the case for substantial abuse or other potential problems, recognized the name of a business that the debtor listed as closed. One telephone call confirmed her belief that the business was still operating. A thorough investigation ensued and numerous grounds for denial of discharge were discovered.”

Joe Buzhardt, Assistant U.S. Trustee, Columbia

honest but unfortunate debtor by granting such a discharge.

A Chapter 7 discharge is usually issued 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 affairs; destroying property to hinder or defraud a creditor or trustee; knowingly making a false oath; or refusing to obey a court order. In addition, 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 one of the strongest remedies available against debtors who undermine the integrity of the bankruptcy system.

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 affairs; destroying property to hinder or defraud a creditor or trustee; knowingly making a false oath; or refusing to obey a court order.

In FY 2004, U.S. Trustees filed 1,056 complaints objecting to the entry or seeking revocation of the debtor’s discharge under Section 727. Of the 915 complaints that were resolved by judicial decision or by debtor consent during FY 2004, the discharge was denied, waived, or revoked in 865 or 94.5 percent of the cases. In total, U.S. Trustees initiated 3,465 informal inquiries and formal court actions pursuant to Section 727. In addition, in some cases criminal proceedings were instituted against the debtors based on the same conduct that led to denial or revocation of discharge. (These figures represent

a snapshot in time; for example, the numbers of Section 727 actions filed and Section 727 actions decided during FY 2004 may not match because some were filed before the reporting period and some were decided afterward.)

U.S. Trustee activity under Section 727 prevented 1,387 debtors from discharging more than \$192.5 million in general unsecured debt in FY 2004 as a result of formal complaints or investigations that resulted in voluntary waivers of discharge, dismissals, or conversions to Chapter 13.

Actions brought by the Program to deny or revoke discharge include the following:

- The Bankruptcy Court for the District of Colorado approved a waiver of discharge by a Chapter 7 debtor who attempted to discharge over \$3.3 million in debt including a \$906,000 civil judgment award, a \$906,000 punitive damage award, and \$982,436 in criminal restitution. The debtor had pleaded guilty to embezzling almost \$1 million from his former employer, who successfully filed an action to except the civil judgment and punitive damages from being discharged in bankruptcy. The Denver office filed the action to deny discharge, alleging the debtor concealed an offshore bank account, a family trust, a self-settled trust, lawsuits, and business interests, and failed to preserve business records or satisfactorily explain the loss of his assets.

- The Bankruptcy Court for the District of South Carolina granted the motion of the Columbia office to prevent Chapter 7 discharge of almost \$500,000 in unsecured debt, about half of which was credit card debt. The debtor failed to disclose that, four months before filing bankruptcy, he pre-paid \$19,800 on a two-year lease on a 2004 Chrysler vehicle. He also failed to disclose the transfers of a condominium in New York, a 2001 Chrysler, and two personal watercraft, all of which were sold within five months pre-petition for a total net profit of over \$50,000. The debtor gave false testimony at his Section 341



SARAH WENCIL

meeting and omitted numerous other material disclosures in his schedules and statements.

- On a complaint filed by the Indianapolis office, the Bankruptcy Court for the Southern District of Indiana entered default judgment to revoke a debtor's discharge, preventing Chapter 7 discharge of \$538,395 in unsecured debt. The debtor did not disclose that, shortly before filing, he sold a limousine business for a \$70,000 down payment and a \$100,000 promissory note. In addition, less than two months after his bankruptcy was closed, the debtor—still president of the business—participated in a second sale of the business, receiving almost \$60,000.

- A complaint to deny Chapter 7 discharge filed by the Portland, Ore., office of the U.S. Trustee and the Chapter 7 trustee was resolved by a stipulated judgment entered by the Bankruptcy Court for the District of Oregon, resulting in non-discharge of over \$1.8 million in unsecured debt. The debtor participated in a scheme to solicit investors to buy certificates of deposit from an offshore bank. In his bankruptcy case, he allegedly concealed assets, failed to keep adequate books and records regarding his financial activities and business, and made false statements about his income.

- The Bankruptcy Court for the District of Minnesota denied a debtor's discharge for false oath, concealment with intent to defraud, and failure to explain a deficiency in assets after the Minneapolis office filed an action against her. The debtor's bankruptcy petition stated she had no jewelry, and the debtor initially denied owning jewelry, other than an anniversary band and gold earrings, when questioned at the Section 341 meeting. Based upon a tip, however, the Chapter 7 trustee asked her if she owned a four-carat diamond ring. The debtor testified she owned such a ring, but the stone was fake. When the debtor delivered the ring to the trustee, she admitted the ring was genuine. After further

investigation, the trustee discovered the debtor owned several other pieces of jewelry, and recovered some of them for the bankruptcy estate. The debtor could not account for all of her jewelry, which was valued on her homeowner's insurance policy at more than \$34,000.

- A Chapter 7 debtor in the Northern District of Georgia who scheduled only \$6,500 in assets and over \$249,531 in unsecured debt on 49 credit cards agreed to convert to Chapter 13 with a three-year payment plan. The Atlanta office reviewed the debtor's partial credit card records, which revealed over \$30,000 in cash withdrawals and \$10,000 in purchases of electronics, furniture, and hardware. After the U.S. Trustee objected to discharge, the debtor testified at a Bankruptcy Rule 2004 examination that he lost the cash through gambling and the credit card purchases were for strangers who paid him half the purchase price in cash. The debtor agreed to convert his case in lieu of going to trial on the U.S. Trustee's complaint.

- The Bankruptcy Court for the Middle District of Tennessee granted the Nashville office's motion to deny a debtor's discharge of \$233,065 in unsecured debt. The debtor initially filed Chapter 11 cases on behalf of himself and a corporation and limited liability company he controlled. He then used bankruptcy estate funds to finance his hobby of racing "Modified Lite" cars, and for Caribbean cruises, clothing, moving costs, rental payments, a stereo sound system, and landscaping, stating on the monthly operating reports that these were business expenses. The U.S. Trustee successfully moved to convert these cases to Chapter 7 and then sought denial of discharge.

- Based on a complaint by the San Antonio office, the Bankruptcy Court for the Western District of Texas entered default judgment denying discharge of almost \$1.7 million in unsecured debt. After the debtor's restaurants were put into receivership, he filed Chapter 11 bankruptcy for

"In this case, effective civil enforcement resulted from the coordinated efforts of the Chapter 7 trustee and the U.S. Trustee. The private trustee focused on recovering the jewelry and administering the estate for the benefit of creditors, and the U.S. Trustee focused on pursuing the dischargeability action to uphold the integrity of the bankruptcy system."

Sarah Wencil, Trial Attorney, Minneapolis



“The large amount of unsecured debt listed in the debtors’ bankruptcy papers—\$609,014—and numerous inconsistencies in the case attracted my attention as I reviewed Chapter 7 petitions. The debtors stated they were unemployed and had minimal assets, yet they also reported owing over \$100,000 for purchases at jewelry stores.”

Brad Perdue, Bankruptcy Analyst, Dallas

himself and two entities. A Chapter 11 trustee was soon appointed in all three cases, and quickly determined that the debtor took cash from the restaurant business and could not fully account for it. The U.S. Trustee further investigated and, after the debtor’s individual case was converted to Chapter 7, sought denial of discharge based on lack of records and inability to explain where money went in all three cases.

Dismissal for ‘Substantial Abuse’

A Chapter 7 consumer case may be dismissed under 11 U.S.C. § 707(b) for “substantial abuse.” Bankruptcy courts generally determine the existence of “substantial abuse” based upon a consideration of the totality of a debtor’s circumstances, including the debtor’s financial ability to repay creditors. Only the U.S. Trustee or the court may seek dismissal for substantial abuse.

Bankruptcy courts generally determine the existence of substantial abuse based upon a consideration of the totality of a debtor’s circumstances, including the debtor’s financial ability to repay creditors.

In FY 2004, U.S. Trustees filed 4,753 motions to dismiss for substantial abuse under Section 707(b). Of the 3,211 motions to dismiss that were resolved by judicial action or by debtor consent during FY 2004, U.S. Trustees were successful in 3,058 or 95.2 percent of the motions. (As with Section 727 complaints to deny discharge, these figures reflect a snapshot in time; the numbers of motions filed and motions decided during FY 2004 may not match because some were filed before the reporting period and some were decided afterward.)

In the aggregate, during FY 2004 U.S. Trustees initiated 28,181 informal inquiries and formal court actions pursuant to Section 707(b). U.S. Trustee activity under Section 707(b) prevented 8,336 debtors from obtaining immediate Chapter 7 discharge of more than \$275 million in general unsecured debt. The amount of debt not discharged in Chapter 7 as a result of actions taken by U.S. Trustees pursuant to Section 707(b) is the actual amount of unsecured debt listed on the debtors’ schedules where the cases were either dismissed or voluntarily converted to Chapter 13.

Examples of actions by the Program include the following:

- The Bankruptcy Court for the Northern District of Texas granted a motion to dismiss the case of married debtors with \$609,014 in credit card debt. The debtors listed \$750 in real and personal property, with no income. Their credit card statements, obtained by the Dallas office, showed jewelry purchases in excess of \$113,000 although the debtors listed only \$50 worth of jewelry on their schedules. The court barred the debtors from refiling bankruptcy for two years.

- Ruling for the Indianapolis office, the Bankruptcy Court for the Southern District of Indiana dismissed, with prejudice and a one-year bar to refiling, the Chapter 7 case of a debtor listing \$407,000 in unsecured debt. Of that debt, \$184,000 was for “non-sufficient funds” checks and much of the balance was for goods purchased with NSF checks. This was the debtor’s second bankruptcy case in four weeks; she wrote 16 NSF checks between the dismissal of her first case and the filing of the second. The U.S. Trustee discovered she used multiple names and Social Security numbers to open bank and credit card accounts. At the conclusion of the hearing, state officials arrested the debtor on an outstanding warrant for criminal check deception.



GREG ZIPES

- The Bankruptcy Court for the Northern District of Florida dismissed the case of a yacht broker, finding that he chose to live an extravagant lifestyle and could have found a way to resolve his federal income tax debt. The debtor listed income of between \$150,000 and \$226,000, a house valued at \$425,000, \$304,013 owed in personal federal income taxes for 1991 through 1999, and one unsecured creditor owed \$1,514. The Tallahassee office argued that the debtor's \$10,593 in monthly expenses, including a \$2,903 mortgage payment and car payments of \$1,298, were excessive.

- Ruling for the Kansas City office after a hearing, the Bankruptcy Court for the Western District of Missouri dismissed the Chapter 7 case of a registered nurse who worked sporadically for several years while receiving \$72,000 per year plus a rent-free \$434,000 house as beneficiary of three trusts. The debtor contended at trial that she required more than \$9,000 per month to meet her living expenses, including a second home in Florida leased for \$2,000 per month. After the court's ruling, the debtor filed a Chapter 13 plan to repay her scheduled debt in full.

- Ruling for the Buffalo office, the Bankruptcy Court for the Western District of New York dismissed the Chapter 7 case of debtors who incurred over \$320,000 in unsecured debt on more than 65 credit cards while earning less than \$20,000 per year.

- The Bankruptcy Court for the Southern District of New York approved a stipulation between a Chapter 7 debtor and the New York City office, converting the case to Chapter 13. The debtor, who earned at least \$120,000 a year, incurred \$116,837 in credit card debt and made extravagant expenditures, dining at expensive restaurants and paying her fiancé's living expenses. The debtor's representations to the U.S. Trustee that her fiancé was unemployed were contradicted in her wedding announcement published in the *New York Times*.

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 inadequate representation and unlawful activity by counsel. Civil enforcement actions by the U.S. Trustee include asking the court to temporarily or permanently bar the 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.

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

In FY 2004, U.S. Trustees filed 707 motions seeking disgorgement of attorney fees under Section 329, in both consumer and business cases. Of the 629 motions resolved by judicial decision or consent during FY 2004, U.S. Trustees were successful in 567 motions against debtors' attorneys or 90.1 percent of the motions resolved. During FY 2004, U.S. Trustees initiated 1,458 informal inquiries and formal actions against debtors' attorneys that resulted in the disgorgement of more than \$4.3 million in attorney fees.

These are examples of Program actions:

- Debtors' counsel agreed to disgorge and waive \$36,350 in fees and expenses in approximately 10 Chapter 13 cases, under a settlement with the Newark office that was entered by the Bankruptcy Court for the District of New Jersey.

“Manhattan and the New York City area provide special challenges for civil enforcement because certain living expenses that appear to be on the high side are reasonable for the area. Nevertheless, in New York City we have identified debtors who have lived lavishly off credit card debt, and who have the ability to repay debts with some old-fashioned belt tightening under a Chapter 13 or Chapter 11 plan. My office aggressively investigates and pursues actions against these abusive debtors.”

Greg Zipes, Trial Attorney, New York City



“Many of the attorney misconduct issues we encounter in St. Louis involve ‘mill’ law firms—that is, firms that handle a high volume of consumer cases. We attempt to educate and develop corrective action plans when possible. Our goals are not only to help ensure that the professional is held accountable, but also to help ‘pick up the pieces’ for the clients and to identify ways to prevent future attorney misconduct. In this case, members of the local bankruptcy bar stepped up to provide free services to more than 170 of the attorneys’ clients.”

Paul Randolph, Assistant U.S. Trustee, St. Louis

An 18-month inquiry by the U.S. Trustee revealed the attorney closed on the sale of debtors’ real property and paid himself without court approval or the disclosure required by the Bankruptcy Code and Rules.

- A debtors’ attorney who signed and filed approximately 90 bankruptcy cases, without meeting with the debtors or obtaining their consent to file, agreed to settle two adversary proceedings and one motion to show cause brought by the St. Louis office. The Missouri Supreme Court suspended the attorney from the practice of law, and the U.S. Trustee created a panel of volunteer private attorneys to help more than 170 of the attorney’s former bankruptcy clients.

- A lawyer who filed over 1,200 bankruptcy petitions for clients in one year agreed to a voluntary suspension from practicing bankruptcy law in the Central District of California for 30 months and to the sale of her bankruptcy practice. The bankruptcy court previously found that the lawyer’s non-attorney husband provided legal advice to a debtor, and concluded the lawyer aided in the unauthorized practice of law and failed to adequately supervise the work of non-attorneys and competently perform legal services. The court also found that the lawyer and other attorneys in her office failed to provide legal services to a debtor or meet with the debtor before filing the petition. The court referred the lawyer to the Discipline Panel for the Bankruptcy Court for the Central District of California, which approved the agreement. The Los Angeles office investigated and prosecuted the matter.

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. Nonetheless, some petition preparers charge exorbitant rates, fail to make necessary disclosures, and engage in other prohibited conduct.

To curb such conduct, U.S. Trustees bring civil actions to obtain orders to disgorge document preparation fees, impose fines, and enjoin prohibited conduct by petition preparers. A new challenge is the emergence of Internet-based technologies that may be employed by bankruptcy petition preparers. Cases filed with the involvement of Internet-based preparers are appearing with increasing frequency across the country. A petition preparer operating through an Internet site may be located virtually anywhere, including in a foreign country.

In FY 2004, U.S. Trustees filed 894 motions and/or complaints seeking relief against petition preparers under Section 110. Of the 797 matters resolved by judicial decision or consent during FY 2004, U.S. Trustees were successful in 748 actions against petition preparers or 93.9 percent of the matters resolved.

During FY 2004, U.S. Trustees pursued petition preparers through informal inquiries and formal court actions in 2,254 cases. U.S. Trustee activity under Section 110 resulted in the imposition of fines and the recovery of fees totaling almost \$3 million, and the issuance of 249 injunctions.



ELIZABETH AMOROSI

U.S. Trustee activity under the statute that governs bankruptcy petition preparers resulted in the imposition of fines and the recovery of fees totaling almost \$3 million, and the issuance of 249 injunctions.

Examples of Program actions against petition preparers include:

- The Bankruptcy Court for the District of Arizona assessed \$302,000 in fines and sanctions against father and son bankruptcy preparers at the request of the Phoenix office. The court previously fined the petition preparers more than \$1.8 million for 3,657 violations of Section 110, and ordered them to disgorge fees to approximately 204 debtors within 30 days. When the petition preparers failed to do so, the court fined them \$500 per violation, or \$102,000, and issued civil contempt sanctions totaling \$200,000 for intentional and flagrant violation of four prior injunctions. The preparers' violations included abandoning their clients; collecting filing fees from clients and then forging their names on applications to pay filing fees with the court; causing the dismissal of clients' cases by failing to timely prepare documents; and filing documents for clients without having the clients review them. In addition to the civil penalties, a grand jury in Maricopa County, Ariz., indicted the preparers on 20 felony counts of theft and one count of fraudulent schemes and artifices, for allegedly taking money from approximately 20 customers and then abandoning them. The father ultimately pleaded guilty to theft and was sentenced to three and a half years in state prison; the son pleaded guilty to attempted illegal enterprise and was sentenced to six months in jail and three years probation and ordered to pay restitution. The U.S. Trustee referred the criminal matter to the county attorney and provided information leading to the arrest of the preparers.

- The Bankruptcy Appellate Panel of the Ninth Circuit Court of Appeals affirmed a bankruptcy court order upholding an injunction obtained by the Oakland office against a web-based bankruptcy petition preparer that engaged in the unauthorized practice of law and fraudulent, unfair, or deceptive conduct. The panel upheld the bankruptcy court's certification of such conduct to the district court, as well as the disgorgement of all fees received from debtors in the Northern District of California, estimated at more than \$57,000. The case is pending before the Court of Appeals for the Ninth Circuit.

- Ruling for the Norfolk office, the Bankruptcy Court for the Eastern District of Virginia permanently enjoined three individuals from acting as petition preparers and engaging in the unauthorized practice of law in Virginia, fined them \$21,000, and ordered them to disgorge all fees paid by clients. Operating out of a hotel room, the petition preparers used radio and television advertisements to lure potential clients experiencing financial difficulties. Some clients joined a \$23-per-month club, received financial advice, and were referred to a "paralegal" who prepared skeleton bankruptcy petitions that would have been dismissed under local bankruptcy rules but for the intervention of the bankruptcy court clerk and the U.S. Trustee. The cases were initially identified by the court clerk, who noticed one individual repeatedly delivering pro se filings to the court. At the request of the U.S. Trustee, members of the local bankruptcy bar stepped in to represent most of the victims.

Serial Filings and Identity Fraud

Serial filing and bankruptcy-related identity fraud are two types of abusive conduct that sometimes, but not always, occur together. Serial filing means repeatedly filing bankruptcy solely for the purpose of frustrating creditors' attempts to obtain payment or to foreclose on real

"For me, one of the most meaningful aspects of this case was the professional dedication of so many members of our staff. The case presented logistical difficulties due to the sheer number of debtors upon whom these individuals had preyed. From the careful interviewing of many debtor witnesses through the preparation of exhibits to the final civil judgment and criminal referral, our legal clerks, paralegals, analysts, and attorneys all assisted when needed. Due to this impressive effort, and attorney Renee Shamblin's tenaciousness, we obtained significant results with respect to the wrongdoers."

*Elizabeth Amorosi,
Assistant U.S. Trustee,
Phoenix*



“This case turned out so well because of significant contributions by our detail-oriented Paralegal Ann Britton; several visiting attorneys who drew upon their many contacts throughout the Program; Chapter 13 trustee Elaina Massey; and staff from the Social Security Administration. Clearly, our ability to combat fraud and abuse in the bankruptcy system is enhanced by the full use of the resources available to us, combined with the development of constructive working relationships with other governmental agencies and the bankruptcy community.”

B. Amon James, Assistant U.S. Trustee, Savannah

property. Bankruptcy-related identity fraud can take various forms, but one of the simplest is to file bankruptcy under a false name and/or Social Security number. Serial filings and bankruptcy-related identity fraud occur in both Chapter 7 and Chapter 13 cases.

Often serial filers do not complete their cases, but remain in bankruptcy just long enough to obtain the automatic stay’s temporary protection from collection activity by creditors. The Bankruptcy Code prohibits a debtor from refiling for bankruptcy within 180 days if the court dismissed the prior case because the debtor failed to appear before the court, failed to abide by court orders, or asked to have the case dismissed after a third party requested relief from the automatic stay. Moreover, many courts will bar a debtor from refiling for a period longer than 180 days if the debtor acted in bad faith. Some serial filers use false names and/or Social Security numbers in some or all of their bankruptcy cases to escape this prohibition against immediate refiling. However, the U.S. Trustee monitors its own data bases as well as court records for evidence of abusive refiling, and seeks dismissal or denial of discharge in such cases.

Often serial filers do not complete their cases, but remain in bankruptcy just long enough to obtain the automatic stay’s temporary protection from collection activity by creditors.

To curb bankruptcy-related identity fraud, the U.S. Trustee Program requires all debtors to produce documents at the Section 341 meeting in an effort to confirm their names and Social Security numbers.

Examples of cases involving serial filing and/or bankruptcy-related identity fraud include the following:

- The Bankruptcy Court for the Southern District of California denied the discharge of a debtor who filed bankruptcy every year since 1995, and barred him from refiling bankruptcy for 11 years, based on a complaint filed by the San Diego office. At trial, the U.S. Trustee established that the debtor solicited homeowners who were facing foreclosure, induced them to convey their property interests to him, and transferred partial property interests into a pending bankruptcy case to stall foreclosure. The court denied the debtor’s discharge for failure to keep books and records relating to the transactions. It also found his actions were an improper use of the bankruptcy system and were grounds to bar him from refiling.

- Based on a referral from the Chapter 13 trustee, the Savannah office investigated and determined that a debtor filing in the Southern District of Georgia had used six different Social Security numbers in seven bankruptcy cases she filed since 1994, as well as 13 other SSNs for non-bankruptcy purposes. The debtor also failed to disclose prior bankruptcies in all of her prior cases. Her husband used different SSNs in his two bankruptcy cases and for non-bankruptcy purposes, and failed to disclose prior bankruptcies in his present case. Between the two of them, the spouses filed Chapter 13 bankruptcy in each



MIRIAM SUAREZ

of the previous six years. In response to the U.S. Trustee's motion to dismiss their case, the debtors consented to dismissal with prejudice, barring discharge of all claims that were or could have been asserted in the present case.

- On motion of the Sacramento office, the Bankruptcy Court for the Eastern District of California dismissed a Chapter 7 case where the debtor listed \$91,000 in unsecured debt but only \$576 in monthly fixed income for the previous three years. The U.S. Trustee contacted the debtor and learned she had not lived in California for more than three years, had not seen or signed the bankruptcy documents, and had unsecured debts of less than \$6,000. The U.S. Trustee determined that the debtor's son incurred more than \$85,000 in credit card debt in her name and filed bankruptcy to hide his action. With the U.S. Trustee's assistance, the victim filed a police report and notified the Federal Trade Commission and the credit reporting agencies of the identity theft.

- Ruling for the Orlando office in two related proceedings, the Bankruptcy Court for the Middle District of Florida enjoined two married debtors from filing bankruptcy for five years. The debtors had filed 18 cases in nine years in two divisions of the judicial district. They filed individual and corporate cases to stop foreclosures of property personally owned, using nine Social Security numbers and using incorrect Taxpayer Identification Numbers in the corporate cases. The court found they flagrantly abused the Bankruptcy Code and repeatedly perpetrated frauds upon the court, victimizing the SSNs' true holders.

Abuses by Creditors and Others

To protect consumers, the Program and the private trustees whom it oversees take actions against improper conduct by creditors and other third parties. These actions include: objecting to claims filed by creditors who chronically or willfully fail to demonstrate they are entitled to payment in the amount or priority asserted in the proof of claim; seeking to avoid liens and bringing actions for creditors' failure to timely release liens; addressing violations of the automatic stay; challenging improper reaffirmation agreements; pursuing violations of the Truth in Lending Act, the Homeowners Equity Protection Act, and the Federal Credit Reporting Act; and challenging the unauthorized use of official court language in written solicitations to consumer debtors.

To protect consumers, the Program and the private trustees whom it oversees take actions against improper conduct by creditors and other third parties.

These are examples of Program and trustee actions against abuses by creditors and others:

- Based on a referral by the Newark office, the U.S. Attorney for the District of New Jersey issued a cease and desist letter to a car dealership, advising it of the prohibition against the unauthorized use of the words "United States Bankruptcy Court" to convey the impression that the court approves or endorses a publication. The cease and desist letter also required the dealership to send a disclaimer to all who received the mailing. A Chapter 7 debtor complained to the bankruptcy court after receiving a pamphlet from a financing company that used the letterhead "United States Bankruptcy Court, Main Office of Disbursement, Automobile Financial Department."

"This case was troubling because of the number of victims involved, as opposed to the dollar amounts at issue. After filing actions in several cases to help the victims of identity theft, we decided steps needed to be taken to prevent the debtors' further fraud and abuse of the system. With assistance from Paralegal Specialists Kathleen Appel and Maureen Gimenez, we gathered the evidence and presented it to the court. Persistence paid off, and we obtained the injunctions necessary to stop the abuse."

Miriam Suarez, Trial Attorney, Orlando



“When the Assistant District Attorney learned that several of the credit counselor’s victims had also filed bankruptcy, she contacted the Wichita office for assistance in understanding bankruptcy parlance and the impact of the automatic stay upon her enforcement proceeding. We were more than happy to share our expertise. While the Assistant District Attorney deserves all of the credit for this consumer victory, we take pride in the supporting role we played in the case.”

*Mary May, U.S. Trustee,
Region 20*

- A county district court in Kansas imposed civil sanctions on a consumer credit counselor and two of its agents for violating the Kansas Consumer Protection Act. The court ordered payment of \$190,000 in civil penalties, more than \$120,000 in restitution, and approximately \$9,300 in investigative fees. The agents violated state law by failing to provide three-day right-to-cancel contracts or to inform clients that the credit counselor’s theories of debt avoidance were not deemed valid by any appellate court. The Wichita office provided the county district attorney with technical assistance regarding bankruptcy law and the role of consumer counselors in the bankruptcy context.

CHAPTER 4

CRIMINAL ENFORCEMENT



Photo 1: Nancy Resnick

Photo 2: Bill Goldman, Richard Byrne

Photo 3: Celeste Miller

Fighting Bankruptcy Crimes

Federal law directs the Program to refer criminal activity to the U.S. Attorneys and other law enforcement agencies and, upon request of the U.S. Attorney, to assist in prosecuting criminal violations of the bankruptcy laws.

The U.S. Trustee Program's role in criminal enforcement is multi-faceted. The Program's Criminal Enforcement Unit, created in FY 2003, assists staff as they coordinate with federal investigative agencies and U.S. Attorneys' offices on criminal case referral, development, and prosecution. The Criminal Enforcement Unit consists of former federal prosecutors located in several offices across the country. Members of the unit train Program staff in fraud detection, investigation, and referral; help build relationships with prosecutors and others in the criminal justice system; and participate in criminal cases as Special Assistant U.S. Attorneys.

With guidance from the Criminal Enforcement Unit, Program staff help investigate cases of suspected bankruptcy fraud, often providing documentary evidence along with their referrals to the U.S. Attorneys' offices. Program attorneys who are designated as Special Assistant U.S. Attorneys act as lead or assistant prosecutors in bankruptcy fraud cases. Program staff serve on inter-agency working groups, providing information on how bankruptcy interrelates with crimes such as federal benefits fraud, identity theft, mortgage fraud, money laundering, and credit card fraud. In addition, they conduct training and outreach programs, where they teach law enforcement personnel and others how to recognize and pursue cases of potential criminal bankruptcy fraud.

With guidance from the Criminal Enforcement Unit, Program staff help investigate cases of suspected bankruptcy fraud, often providing documentary evidence along with their referrals to the U.S. Attorneys' offices.

Criminal Enforcement Actions

Bankruptcy fraud often is linked to other crimes, such as credit card fraud, tax fraud, identity fraud, federal benefits fraud, mortgage fraud, and money laundering. Further, the bankruptcy system is susceptible to fraud by individuals and entities who prey upon unsophisticated consumers in financial distress.

Criminal enforcement actions include prosecutions relating to:

- Concealment of assets.
- Crimes by attorneys and bankruptcy petition preparers.
- Credit card bust-outs and identity fraud.
- Creation of false documents.
- Various other crimes including tax fraud, bank fraud, mail fraud, money laundering, embezzlement, and perjury.

Concealment of Assets

Some debtors try to hide assets from creditors and from bankruptcy trustees by failing to disclose assets on their bankruptcy documents and by lying about their assets at the Section 341 meeting or in bankruptcy court. Sometimes, concealment of assets is only one part of a complex fraudulent scheme that includes other offenses such as wire fraud, mail fraud, securities fraud, real estate fraud, and tax fraud.

Some debtors try to hide assets from creditors and from bankruptcy trustees by failing to disclose assets on their bankruptcy documents and by lying about their assets at the Section 341 meeting or in bankruptcy court.

Concealment cases that were resolved in FY 2004 included the following:

- In the District of Colorado, a former Colorado police officer was found guilty of bankruptcy



“This case shows how the U.S. Trustee, Chapter 7 trustee, and U.S. Attorney worked together efficiently to achieve justice in the bankruptcy system. After receiving a tip that the police officer failed to disclose property in her bankruptcy case, the private trustee promptly informed the U.S. Trustee, who verified the allegations and referred the matter to the U.S. Attorney. The private trustee took legal action to recover the vehicle in the bankruptcy case, and the prosecutor went forward with the criminal case.”

Leigh Lichtenegger, Trial Attorney, Denver

fraud as well as fraudulent transfer and concealment of property. Weeks before filing bankruptcy, the officer received \$30,000 from her parents, transferred this money to her roommate, and had her roommate buy a new \$32,700 vehicle for her. After the bankruptcy proceedings concluded and the officer received a discharge of approximately \$64,000 in debt, the roommate gifted title to the vehicle back to her. The officer was sentenced to five months in prison, five months home detention, and three years supervised release, and was ordered to pay \$22,000 in restitution to the Chapter 7 trustee. The Denver office referred the case for prosecution.

- An architect pleaded guilty in the Eastern District of Arkansas to conspiracy to commit bankruptcy fraud and tax evasion. The architect filed a Chapter 11 bankruptcy case that was subsequently converted to Chapter 7. He continued to live a luxurious life style, taking a cruise, a trip to the Cayman Islands, and a casino trip, by disguising personal expenses as business expenses. A referral by the Little Rock office led to the discovery of nine bank accounts and up to 40 credit cards issued or owned by various corporations and partnerships operated by the architect, who also failed to file tax returns for 1996 through 1999 on income of more than \$602,000.

- A Chapter 7 debtor pleaded guilty to concealment of assets in the District of Kansas. The debtor admitted concealing the pre-bankruptcy transfer of two mobile home parks to a fictitious corporation in a scheme to cheat his ex-wife out of a \$250,000 property settlement. He fabricated a Mexican marriage to a non-existent individual, established a false residence in Nevada, obtained a false divorce awarding the non-existent wife all his assets, and filed bankruptcy to discharge his true wife’s claim. An investigation by the Chapter 7 trustee revealed the debtor’s false schedules, statements, and Section 341 meeting testimony. The Reno office assisted in the investigation and referred the case for prosecution.

- A debtor in the District of Arizona was sentenced to 46 months in prison and two years supervised release, and ordered to pay \$240,382 in restitution, after being convicted of bankruptcy fraud, money laundering, and false declarations before a court. The debtor, who filed Chapter 11 bankruptcy twice, purchased property instead of paying creditors under his first reorganization plan; failed to disclose the property in his second bankruptcy; failed to report the sale of the property; and testified under oath that neither he nor his corporation owned the property when he filed bankruptcy. Staff from the Phoenix office worked with the IRS to investigate the case, and testified at trial.

Crimes by Attorneys and Bankruptcy Petition Preparers

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

Crimes by attorneys, bankruptcy petition preparers, or their employees include embezzling from the bankruptcy estate, assisting debtors in concealing assets, and engaging in activities that abuse the integrity of the bankruptcy process.

The following are examples of crimes by bankruptcy professionals in FY 2004:

- An attorney was sentenced in the Southern District of Mississippi to 26 months in prison followed by three years supervised release, and ordered to pay \$395,000 in restitution, after pleading guilty to embezzling from bankruptcy



MARIA BARONICH

clients. The court also ordered the attorney to surrender his law license and not apply for readmission to the bar. The Jackson office assisted in the investigation and prosecution of the matter.

- An attorney who had filed bankruptcy pleaded guilty to bankruptcy fraud in the Eastern District of Tennessee. After filing Chapter 7 bankruptcy with her husband, the attorney lied under oath at the Section 341 meeting and at a Bankruptcy Rule 2004 exam regarding missing funds she placed in her attorney trust account. The attorney was also charged with money laundering and conspiracy with her husband, who was serving time in prison. The Chattanooga office assisted in the investigation and prosecution of the case. The attorney was sentenced to five months in prison, five months home detention, and two years supervised release.

- An attorney pleaded guilty in the District of Arizona to one count of embezzlement of public money. The attorney received debtors' funds into his trust account for payment of creditors and U.S. Trustee quarterly fees. He embezzled \$74,500 in funds intended for quarterly fee payments, by taking a client's certified check and having the bank reissue it payable to his trust account. The attorney was ultimately disbarred and sentenced to 21 months in prison and three years supervised release, and ordered to pay more than \$76,000 in restitution. The Phoenix office referred the matter to the U.S. Attorney and assisted in the investigation.

- A former attorney and Chapter 7 trustee pleaded guilty to one count of embezzlement in the District of Rhode Island, after an investigation by the Providence office revealed he engaged in defalcation of \$7,500 from a bankruptcy estate and paid his home mortgage with some of the proceeds. The trustee made restitution, consented to disbarment, and was sentenced to one year probation.

- A jury in the Northern District of California returned a guilty verdict on all counts of bankruptcy fraud against a bankruptcy petition preparer who advertised his services to individuals facing eviction. The Oakland office and the bankruptcy clerk had noticed that a number of bankruptcy filings listed the same mailing address. Further investigation revealed that the petition preparer had filed bankruptcy cases on behalf of individuals facing eviction without their knowledge or consent and without disclosing his involvement in preparing the documents. The Oakland office assisted in the investigation and prosecution of the case.

- Chapter 11 debtor's counsel was charged in the Southern District of New York on one count of embezzling over \$101,000 from the debtor's estate, and was subsequently sentenced to five months in jail and five months home confinement. Earlier, the attorney resigned from the New York Bar and was disbarred. Both the disbarment and the criminal charges resulted from the efforts of the New York City office in reviewing the attorney's conduct in the Chapter 11 case.

- A retired Atlanta police officer who became a bankruptcy petition preparer was sentenced to 18 months in prison and ordered to pay \$89,022 in restitution after pleading guilty in the Northern District of Georgia to one count of bankruptcy fraud. The petition preparer solicited business from homeowners by promising to save their homes from foreclosure, but instead he filed bankruptcies in their names without their knowledge. The Atlanta office discovered the fraudulent filings, obtained an injunction against the petition preparer, and assisted in the investigation that led to the petition preparer's indictment.

- A Chapter 13 trustee's employee in the Northern District of California pleaded guilty to embezzling from the trustee. The employee misappropriated cashier's checks and money orders, endorsed them, and deposited them into his own

"The attorney diverted funds from court-approved sales of bankruptcy estate property, and commingled them in various 'trust' accounts with funds from non-bankruptcy clients. We identified court orders showing the source of the funds in the attorney's accounts and the parties legally entitled to payment, and the FBI reconstructed the accounts. We showed that certain funds were clearly the proceeds of asset sales, and that pay-outs from the accounts were not related to a court order approving attorney fees."

*Maria Baronich,
Bankruptcy Analyst,
Jackson*



“The Chapter 13 trustee in Fresno discovered that his legal clerk had embezzled a money order. He advised the U.S. Trustee’s Regional Analyst in San Francisco, who coordinated an audit and reconstruction of records. Lawyers in my office subpoenaed bank records and traced missing funds to the employee’s bank account. Our efforts revealed that the employee had actually misappropriated over a dozen debtor payments. The Fresno office and the Regional Analyst presented the case to the U.S. Attorney, resulting in the employee’s arrest and conviction.”

Jeff Lodge, Trial Attorney, Fresno

account. He was sentenced to five years probation, community service, and full restitution of the amount embezzled. The Fresno office, along with the regional bankruptcy analyst in San Francisco, provided information leading to the conviction.

Credit Card ‘Bust-Outs’ and Identity Fraud

Bankruptcy-related credit card fraud often consists of a debtor’s attempt to discharge credit card debt that was incurred through fraudulent conduct. Sometimes this is part of a scheme called a credit card bust-out, in which an individual runs up a significant amount of consumer credit card debt for purchases and cash advances. The individual may file bankruptcy in an attempt to discharge the entire debt. To obtain the credit, an individual engaging in a credit card bust-out may make false statements on credit applications, such as giving a false name and/or Social Security number, false employment history, and inflated salary information to qualify for a higher credit limit. Typically, the purchases and cash advances occur within a two- or three-month period, with charges often incurred on multiple credit card accounts on the same day. Eventually, a bankruptcy case will be filed.

Sometimes this fraud is part of a scheme called a credit card bust-out, in which an individual runs up a significant amount of consumer credit card debt for purchases and cash advances, and then files for bankruptcy to discharge the debt.

Bust-out schemes may be small local operations or may be run by organized rings as a part of a larger criminal enterprise. In some cases, the money is transferred overseas. Sometimes, individuals are approached by “recruiters” to participate in the scheme. The individual agrees to use personal credit cards and to obtain additional credit cards under his or her name or under a false

name. The recruiter causes the individual to use the cards to obtain cash advances or merchandise that is sold for cash, and the individual receives cash or merchandise as payment for participating in the scheme. The recruiter may instruct the individual to pay credit card bills with checks drawn on bank accounts with insufficient funds, and then to obtain additional cash advances or purchase additional merchandise before the checks are returned for insufficient funds. In addition, credit card bust-outs may involve collusive merchants who process fictitious credit card purchases for a portion of the proceeds, with or without the individual card holder’s knowledge. After the fraud is accomplished, the recruiter may suggest that the individual file Chapter 7 bankruptcy to discharge the unsecured credit card debts.

These are examples of cases involving credit card bust-outs and/or identity fraud:

- A debtor whose fraud led to the discharge of millions of dollars in debt was sentenced in the Central District of California to 12 months in prison and three years supervised release and ordered to pay \$775,668 in restitution. The debtor made false statements and concealed more than \$725,000 in foreign and domestic bank accounts in his bankruptcy case. His fraud led to the bankruptcy discharge of debts including \$14 million owed to a national clothing retailer and abatement of \$3.6 million he owed to the IRS. A jury convicted the debtor of bankruptcy fraud and use of false Social Security numbers to open bank counts. The Program’s Regional Criminal Coordinator from the Los Angeles office prosecuted the case.

- A debtor was sentenced in the Eastern District of Wisconsin to 28 months in prison and ordered to pay more than \$200,000 in restitution following her conviction for engaging in a scheme to defraud mortgage lenders. The debtor used a Social Security number, falsely obtained for her deceased infant, to obtain mortgage loans



DAVID ASBACH

she then discharged through bankruptcy. She was indicted on charges of Social Security fraud; conspiracy to commit mail, wire, and Social Security fraud; and false statement in bankruptcy. The Milwaukee office assisted the U.S. Attorney and FBI in the investigation.

- An illegal alien from Jordan was sentenced in the District of New Jersey to nine years in prison for recruiting dozens of individuals to engage in fraudulent credit card bust-outs that resulted, over a seven-year period, in approximately \$6.8 million in fraudulent purchases of merchandise and cash advances. The defendant opened, and directed his recruits to open, more than 1,000 credit card accounts in their names. He used 30 aliases and 60 fraudulent driver's licenses to apply for credit cards. At least a dozen of the recruits have been prosecuted. The Newark office assisted in the investigation and prosecution of the case.

- In the Northern District of Georgia, two individuals were sentenced to 60 months and 18 months, respectively, in prison and ordered to pay almost \$3 million in restitution to mortgage lenders. One individual pleaded guilty to conspiracy to defraud the United States, bankruptcy fraud, and fraudulent use of a Social Security number; the other pleaded guilty to wire fraud. The two were part of a group that bought, sold, and encumbered houses either by using stolen identities or by arranging for "straw sellers" and "straw borrowers." The defendants gave false identification, forged releases and quitclaim deeds, and false financial information to qualify for and close mortgage loans. To further the scheme and prevent foreclosure of the properties, they often filed bankruptcy in the names of purported owners. The Atlanta office assisted the FBI and the U.S. Attorney in the case.

- A husband and wife who were involved in both a business and personal credit card bust-out scheme that resulted in \$11 million in losses were sentenced in the Central District of California. The husband was sentenced to 41 months in

prison and ordered to pay \$4.9 million in restitution; the wife was sentenced to 12 months in prison and ordered to pay nearly \$450,000 in restitution. The couple provided false information when they sought millions of dollars in credit for their business from credit card companies, banks, and high-end national retail stores. Once they obtained credit, the couple accumulated large balances with no intent to repay. They spent more than \$350,000 of the fraud proceeds on luxury items such as watches, diamonds, and designer clothing. When the bust-out was complete, the couple filed bankruptcy for themselves and the company to avoid paying the debts. Two other individuals also pleaded guilty to conspiracy charges for participating in this bust-out scheme as well as bust-out schemes for three other companies that declared bankruptcy after millions of dollars worth of merchandise was purchased on credit. The Program's Regional Criminal Coordinator from the Los Angeles office assisted in prosecuting the case.

Creation of False Documents

The creation and use of false documents strikes at the integrity of the bankruptcy courts, wastes court resources, and undermines public trust in the bankruptcy process. Individuals may falsify documents to stop a foreclosure, sheriff's sale, or other lawful activity; collect payments on non-existent debts; or defraud an individual or a company.

The creation and use of false documents strikes at the integrity of the bankruptcy courts, wastes court resources, and undermines public trust in the bankruptcy process.

These cases involve the creation of false documents:

- The chief financial officer of a construction company in bankruptcy pleaded guilty to

"The debtor used the identity of her deceased infant to obtain mortgage loans, and then filed bankruptcy in the infant's name to discharge the mortgage debt. We assisted the U.S. Attorney and FBI with the bankruptcy aspect of the criminal case, including drafting the plea agreement and interviewing the debtor about related bankruptcy issues."

David Asbach, Assistant U.S. Trustee, Milwaukee



“This case was an excellent example of agencies working together to crack the debtors’ scheme to defraud the bankruptcy system and creditors. The U.S. Trustee Program, the FBI, and the U.S. Attorney each had part of the picture, starting with a tip that the debtors were trying to sell jewelry they had claimed was stolen. Initially, the case appeared to be one of insurance fraud. By coordinating our efforts, however, we determined the debtors used bankruptcy as one element of a scheme to pocket the money they hoped to receive from selling the jewelry.”

Gail Geiger, Assistant U.S. Trustee, Eugene

bank fraud in the Western District of Louisiana. The CFO wrote two-party checks to a sham company, signing both required names. The Shreveport office referred the matter after a pre-petition scheme to defraud the company of at least \$568,000 was revealed during discovery for an adversary proceeding to recover preferential payments made to a shell business.

- A debtor was charged in the Southern District of Ohio with bankruptcy fraud and tampering with a witness. The debtor sent bankruptcy notices to a creditor falsely stating she had filed bankruptcy, and then told a witness to lie about her conduct. The debtor ultimately pleaded guilty to bankruptcy fraud and was sentenced to eight months in prison on that count, followed by 14 months in prison for violating terms of her supervised release for a prior bank fraud conviction. The Cincinnati office referred the case to the U.S. Attorney.

- In the District of West Virginia, an individual was found guilty of engaging in a scheme to defraud the bankruptcy court by filing an involuntary Chapter 7 petition against another person, while falsely claiming to be a creditor and fraudulently making a false declaration and statement under penalty of perjury. The individual purchased real estate from a trust in which an attorney was named trustee, but he failed to make payments and the attorney gave a notice of foreclosure. The individual then filed an involuntary petition against the attorney, claiming she owed \$4 million to him and \$2 million to two assignees. The Charleston office obtained dismissal of the case, arguing that the individual and the two assignees did not have undisputed, non-contingent claims. The office also referred the case for prosecution and participated in the trial, at which the Assistant U.S. Trustee testified.

Other Crimes

Virtually any type of criminal conduct can arise in connection with a bankruptcy case. Often the bankruptcy filing is the last violation in a series of crimes that may include tax fraud, bank fraud, mail fraud, securities fraud, money laundering, embezzlement, real estate fraud, and perjury.

Virtually any type of criminal conduct can arise in connection with a bankruptcy case, including tax fraud, bank fraud, mail fraud, securities fraud, money laundering, embezzlement, real estate fraud, and perjury.

The following are examples of cases involving various other crimes:

- Chapter 7 debtors pleaded guilty to one count of bankruptcy fraud in the District of Oregon. When the married debtors filed bankruptcy, they claimed that \$80,000 in jewelry was stolen before they filed and that the loss was uninsured. Approximately one year after their case was closed as a no asset case, the debtors apparently began trying to sell the jewelry. The Eugene office worked with the U.S. Attorney’s office to unravel the debtors’ use of the bankruptcy system in their scheme to defraud. Ultimately, the debtors negotiated a sale of the jewelry to an undercover FBI agent posing as a “fence.”

- The mayor of East Cleveland, Ohio, was convicted on 22 counts for using his public position to conduct a racketeering enterprise. He was charged with receiving bribes, kickbacks, and secret payoffs that were often funneled through intermediaries. A jury in the Northern District of Ohio found him guilty of racketeering, mail fraud, extortion, filing false tax returns, and falsification of bankruptcy records, including failure to disclose interests in real estate and receipt of income from the real estate. An attorney from the Cleveland office served as a Special Assistant U.S. Attorney in the case.



MICHAEL HAUSER

• After five days of trial, the former president of a corporation pleaded guilty in the District of South Carolina to 22 counts of state law securities fraud. The corporation filed Chapter 11 bankruptcy following the collapse of its parent, a holding company for sub-prime lenders and the primary lending arm for the businesses. The corporation sold subordinated debentures and notes to the public and transferred the money to the parent entity. When the corporation filed bankruptcy, it owed investors nearly \$280 million dollars. Federal and state law enforcement authorities coordinated efforts to investigate and prosecute criminal violations. An Assistant U.S. Trustee from the Columbia office testified at the trial. A tape from the Section 341 meeting was identified and played for the jury to counter the defendant's claim that he knew little about corporate governance and financial issues.

• In the Eastern District of Tennessee, a 97-month sentence was imposed on a company's principal officer for his part in an investment scheme that came to light when he filed a Chapter 11 petition for the purported gold refining corporation. The officer and a co-defendant preyed upon elderly investors, promising their investments would double in 90 days. Investor losses totaled around \$7 million. The co-defendant, who was a Chapter 7 debtor, was ultimately sentenced to 72 months in prison and ordered to pay almost \$4.85 million in restitution. The Chattanooga office obtained conversion of the corporate case from Chapter 11 to Chapter 7 and, along with the Chapter 7 trustees, assisted in the criminal investigations.

• A defendant was sentenced in the Central District of California to 13 months in prison followed by three years supervised release, and ordered to pay a \$10,000 fine to the United States, after pleading guilty to bankruptcy fraud. The defendant engaged in a scheme to defraud creditors of his business's "clients," who were facing foreclosure. The defendant caused the clients to sign deeds temporarily transferring a partial

interest in their homes to a fictitious person in whose name the defendant had filed bankruptcy, thus temporarily delaying foreclosure proceedings. His scheme was discovered by the Santa Ana office, which referred the matter to the U.S. Attorney. Previously, the U.S. Trustee had obtained an injunction and a fine against the defendant for his abuse of the bankruptcy process.

• A jury in the District of New Jersey convicted a physician on 23 counts of tax evasion and bankruptcy fraud. The physician failed to disclose transfers, disbursements, and other transactions that occurred during the year before he filed Chapter 7 bankruptcy for his medical clinic. The jury found that \$41,000 in checks written by the physician to his father on the medical practice's operating account were cashed, and the money was funneled back to the physician. The jury also found the physician deposited \$64,975 of the practice's receipts into his personal bank account. Further, he failed to file 22 federal tax forms and employee withholding documents and owed back taxes that exceeded \$750,000. The Newark office assisted with the investigation and witness preparation. The physician had previously been placed on probation for two years and fined \$10,000, after the New Jersey State Board of Medical Examiners charged him with administering unnecessary treatments and submitting inaccurate bills to insurance companies.

• A 24-year veteran of a city police department was sentenced in the Northern District of Indiana to nine years and seven months in prison after pleading guilty to conspiracy to distribute cocaine and marijuana, honest services fraud, and bankruptcy fraud. The police officer used his position on a drug task force to provide information to drug traffickers, and he provided protection to illegal gambling and liquor establishments. The bankruptcy fraud charges arose from his false statements in his bankruptcy documents regarding more than \$43,000 in casino gambling losses. The South Bend office assisted in the prosecution. The police officer received

"All of the petitions filed by this preparer raised red flags because they lacked basic information typically included when a debtor lists a property interest in a home, such as the amount of secured debt, mortgage debt, or property taxes owed. When the debtors failed to show up for their Section 341 meetings, we investigated further. We checked all of the Social Security numbers listed on the debtors' petitions and none matched up with the named debtors. Eventually we identified a pattern of abuse that led back to the petition preparer."

Michael Hauser, Trial Attorney, Santa Ana



“Over the past year, the Program enhanced its criminal enforcement efforts through increased coordination and cooperation with the U.S. Attorney community and our federal law enforcement partners. At the forefront of these efforts has been our participation in the local bankruptcy fraud working groups established in many districts. Equally as important are the dedicated efforts of many Program attorneys, paralegals, and analysts who readily assist in the investigation and prosecution of bankruptcy fraud. The synergy achieved through this coordination substantially advances the Department’s ability to protect the integrity of the bankruptcy system.”

Richard E. Byrne, Chief of Criminal Enforcement, EOUST

a Chapter 7 discharge in October 2002, but the U.S. Trustee and the Chapter 7 trustee obtained revocation of the discharge the following year.

Multi-Agency Working Groups

Many successful criminal enforcement actions result from the work of national and local bankruptcy fraud working groups. As a member of these law enforcement working groups, the Program serves as a resource for information, education, and training on the bankruptcy system and specific law enforcement initiatives.

U.S. Trustee field offices participate in local bankruptcy fraud working groups along with representatives from other law enforcement agencies.

The National Bankruptcy Fraud Working Group provides a coordinated mechanism for sharing information and assisting in the investigation and prosecution of bankruptcy crimes. This working group focuses on emerging areas of bankruptcy fraud such as corporate fraud, mortgage fraud, credit card bust-outs, and identity fraud. It includes members from Department components such as the U.S. Trustee Program, the U.S. Attorneys’ offices, the Criminal Division, and the FBI, as well as representatives from a variety of federal agencies including the Internal Revenue Service, the Department of Housing and Urban Development’s Office of Inspector General (HUD OIG), the Treasury Department, the Social Security Administration’s Office of Inspector General (SSA OIG), the Postal Inspection Service, the Veterans Administration, the Federal Trade Commission, the Securities and Exchange Commission, and the Commodities Futures Trading Commission.

U.S. Trustee field offices participate in approximately 60 local bankruptcy fraud working groups, which may include representatives from the U.S. Attorney’s office, FBI, Secret Service, IRS, HUD OIG, U.S. Postal Inspection Service, SSA OIG, and other federal law enforcement agencies. The local working groups discuss emerging issues, develop criminal referrals, and provide bankruptcy fraud training.

CHAPTER 5

LITIGATION IN CHAPTER 11 BUSINESS REORGANIZATIONS



U.S. Trustee Duties in Chapter 11 Cases

The U.S. Trustee oversees many activities in Chapter 11 reorganizations. The type and degree of oversight activity depends on the size and nature of the case. In all Chapter 11 cases, the U.S. Trustee seeks to ensure that the case moves through the system in a timely and efficient manner.

The U.S. Trustee oversees many activities in Chapter 11 reorganizations to ensure that cases move through the system in a timely and efficient manner.

The U.S. Trustee performs certain tasks in all Chapter 11 cases. These duties include:

- **Reviewing First Day Orders.** The U.S. Trustee closely reviews the debtor's requests for emergency orders early in a bankruptcy case, and ensures that the requested relief is tailored to the circumstances. For example, debtors may seek immediate court approval to retain professionals, obtain emergency financing, and pay certain suppliers. These requests may affect the rights of creditors and alter their ability to negotiate the terms of the debtor's reorganization later in the case.
- **Conducting Initial Debtor Interviews.** Immediately after a case is filed, the U.S. Trustee contacts the debtor's attorney to schedule an "initial debtor interview" 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.** As soon as possible after a case is filed, the U.S. Trustee appoints a committee of unsecured creditors. The U.S. Trustee also evaluates whether additional official committees should be appointed and engages in oversight of committee actions. Each committee upholds the interests of the creditor group it represents.
- **Conducting Meetings of Creditors.** Within 20 to 60 days after a case is filed, the U.S. Trustee schedules and presides at a meeting of creditors, where the debtor or its representative is examined under oath by the U.S. Trustee, the case trustee, creditors, or other parties in interest.
- **Appointing Chapter 11 Trustees and Examiners.** Although the debtor generally remains in possession of its assets while reorganizing in Chapter 11, the court may order the appointment of a Chapter 11 trustee if it determines that cause exists or that the appointment is in the best interest of creditors, equity holders, and others with an interest in the estate. A trustee "steps into the shoes" of the debtor's operating management, and acts as a fiduciary for all interested parties. As an alternative, the court may decide to leave the debtor's management in place, but direct the appointment of an examiner to investigate and report on the debtor's conduct, assets, liabilities, business operations, and financial conditions. If the court orders the appointment of a trustee or examiner, the U.S. Trustee, after consultation with the parties and subject to court approval, appoints a disinterested person to serve in that capacity. In FY 2004, the U.S. Trustee filed 123 motions to appoint a trustee or examiner. During that period, 112 motions to appoint a trustee or examiner were granted and eight were denied.
- **Monitoring Employment and Compensation of Professionals.** The U.S. Trustee reviews and, if appropriate, objects to applications filed by professionals seeking employment in the case, payment of compensation, and/or reimbursement of expenses. Professionals who serve in the case and receive payment from the bankruptcy estate might include attorneys, accountants, auctioneers, financial advisors, turnaround specialists, and real estate brokers. The Bankruptcy Code requires these professionals to be free of interests adverse to the bankruptcy estate. During FY 2004, 5,402 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 \$50 million.

- **Reviewing Reorganization Plans and Disclosure Statements.** The U.S. Trustee reviews reorganization plans and disclosure statements filed by parties to determine whether they provide adequate information. During FY 2004, U.S. Trustees filed 702 objections to disclosure statements and 345 objections to confirmation of debtors' plans. Objections to disclosure statements were sustained in 518 cases, while confirmation was denied or plans were voluntarily amended in 224 cases after a formal objection had been filed. In 133 cases, debtors voluntarily amended their plans of reorganization to comply with the U.S. Trustee's concerns without the need for formal court action.

- **Ensuring Compliance.** The U.S. Trustee determines whether all required schedules, statements, and reports are timely filed, and that the debtor manages money and assets consistent with the Bankruptcy Code and with its fiduciary duty to creditors. The debtor must file monthly operating reports that detail its financial condition and allow the U.S. Trustee, the court, and parties in interest to monitor the debtor's progress toward reorganization.

- **Preventing Delay and Preserving Assets.** The U.S. Trustee takes action to prevent undue delay by, for example, filing a motion to dismiss a case, to convert a case to a Chapter 7 liquidation, or to appoint a Chapter 11 trustee. During FY 2004, U.S. Trustees filed 3,307 motions to dismiss or convert Chapter 11 cases. During the same period, 2,771 motions to dismiss or convert were granted and 131 were denied.

- **Combating Fraud.** The U.S. Trustee investigates criminal, fraudulent, or abusive conduct for possible civil or criminal prosecution. The U.S. Trustee pursues civil penalties, and refers

cases of apparent criminal fraud to the U.S. Attorney for investigation and criminal prosecution.

In FY 2004 the Program dealt with a wide range of Chapter 11 cases, including cases filed by at least four major airlines and by two dioceses of the Roman Catholic Church. During this period, two of the largest legacy air carriers, United Air Lines Inc. and U.S. Airways Inc., as well as Hawaiian Airlines and Aloha Airlines, operated under bankruptcy protection. Major issues in the airline cases included retaining or rejecting labor agreements, renegotiating aircraft lease payments, and retaining or terminating defined benefit pension plans. The bankruptcy filings by the Archdiocese of Portland, Ore., and the Diocese of Tucson, Ariz., also raised complex matters, primarily with respect to claims by victims of sexual abuse. Issues included the identification of potential sexual abuse claimants and future claimants, the valuation of claims, and the scope of bankruptcy estate assets available for distribution to creditors.

Appointment of Trustee or Examiner

Pursuant to 11 U.S.C. § 1104, the U.S. Trustee or any party in interest may seek the appointment of a Chapter 11 trustee for cause including fraud, dishonesty, incompetence, or gross mismanagement of the affairs of the debtor by current management, either before or after the commencement of the case. Alternatively, the U.S. Trustee or any party may seek appointment of an examiner to investigate the conduct of the debtor. Generally, an examiner is appointed where there are questionable management activities, unexplained irregularities in the debtor's financial history or practices, or other special factors. In certain cases, the appointment of an examiner is mandated by the Bankruptcy Code if an examiner is requested by a party in interest.



JOHN DAUGHERTY

The Program works to ensure uniform monitoring of Chapter 11 cases throughout the country. This includes ongoing review of significant legal issues, and consideration of future “best practices” to ensure consistent application of the bankruptcy laws. For example, in FY 2004 the Executive Office for U.S. Trustees planned and implemented a roundtable discussion on the role of examiners, held in October 2004. The discussion reviewed selected issues relating to the role of the examiners in the high-profile and complex cases of Enron Corp. and WorldCom Inc., and identified lessons learned to inform future practices and procedures. The examiners in Enron and WorldCom successfully carried out their mission and produced final reports that were of value to creditors, law enforcement agencies, and the public. Roundtable participants included representatives from the Department of Justice and other federal agencies, as well as the Enron and WorldCom examiners.

The roundtable discussion addressed five major topics: the appointment and selection of an examiner; terms of appointment orders; the coordination of investigations with law enforcement and regulatory authorities; the examiner’s interim and final reports; and the disclosure of information by the examiner outside of the reports. Particular items of interest included delineating the scope of the examiner’s duties; communicating with other governmental participants in the case; expressly providing that the examiner’s investigation has primacy over the work of other non-government agencies; limiting disclosure of the examiner’s work product during and after the investigation; sequencing the investigation and producing smaller reports on specific or targeted issues; and determining the examiner’s role in investigating potential claims held by or against the estate.

The U.S. Trustee may seek the appointment of a Chapter 11 trustee for cause including fraud, dishonesty, incompetence, or gross mismanagement of the debtor’s affairs by current management. Alternatively, the U.S. Trustee may seek appointment of an examiner to investigate the debtor’s conduct.

The following are examples of cases involving appointment of a trustee or examiner:

- The Bankruptcy Court for the District of Maryland granted a motion by the Greenbelt office to appoint an examiner and, subsequently, a trustee in the Chapter 11 case of a major national credit counseling agency. The agency administered debt management plans for approximately 60,000 consumers when it filed bankruptcy. The examiner concluded that the debtor had no plan to reorganize, and that its former president may have engaged in fraud by transferring a large part of the debtor’s assets to a for-profit affiliate. After the examiner issued this report, the debtor consented to appointment of the trustee.
- The examiner appointed by the New York office in the bankruptcy case of WorldCom Inc. filed a report with the Bankruptcy Court for the Southern District of New York. The report contained findings regarding civil liability for WorldCom’s collapse and the appropriateness of the company’s ongoing tax minimization program.
- The Bankruptcy Court for the Southern District of Florida granted the Miami office’s motion for appointment of a Chapter 11 trustee, which was supported by secured lenders. The debtors operated offshore gambling via the day cruise industry. The debtors’ owner was murdered before the bankruptcy filing; after the filing, his probate estate sought removal of current management. The probate estate held ownership interests in the debtors as well as approximately \$60 million in subordinated secured debt that was subject

“This case called for immediate action. The debtor was being sued by the Federal Trade Commission and by Attorneys General from five states, and its tax-exempt status was under review by the Internal Revenue Service. While the FTC and state officials had a wealth of knowledge concerning the debtor’s practices, we were uniquely positioned to investigate its current management. Our analysts quickly learned from a site visit that the management had no experience in managing a distressed company and no viable plan to emerge from Chapter 11.”

*John Daugherty,
Assistant U.S. Trustee,
Greenbelt*

to an agreement with the other lenders. Despite objections by the U.S. Trustee, the secured lenders, and the creditors' committee, the bankruptcy court approved a settlement replacing current management with management controlled by the probate estate. The district court affirmed that ruling, but the Eleventh Circuit Court of Appeals reversed and vacated the settlement. The Eleventh Circuit held that a conflict was created by the relationship between the new management and the debt held by the probate estate, and that the replacement of management violated the lenders' agreement. The motion to appoint a trustee was based upon the Eleventh Circuit's decision.

- An examiner appointed by the Wilmington office filed a report with the Bankruptcy Court for the District of Delaware containing findings regarding the debtors' concealment of nonperforming loan receivables, double pledging of collateral, and improper accounting practices, and the complicity of certain officers and directors in those activities.

- The Brooklyn office appointed a Chapter 11 trustee in a case where a debtor's law firm failed to disclose that, before filing the case, it obtained a "waiver letter" from the debtor's secured creditor, a bank that also provided financing during the Chapter 11 case. The waiver letter stated that the law firm would not represent the debtor in any "disagreement" with the bank. The letter was not disclosed until the U.S. Trustee, after learning that the firm also represented the bank in an unrelated Chapter 11 case, requested an affidavit detailing the relationship between the firm and the bank in this case. In addition to the issue of the waiver letter, the case involved allegations that the debtor's insiders were directing business from the debtor to non-debtor related companies.

Employment and Compensation of Professionals

The Program monitors professionals who serve in bankruptcy cases—such as attorneys, accountants, auctioneers, real estate brokers, and financial advisors—to ensure full disclosure of potential conflicts that may affect a professional's disinterestedness, compliance with the law, and reasonable compensation.

The Program monitors professionals who serve in bankruptcy cases to ensure full disclosure of potential conflicts that may affect a professional's disinterestedness, compliance with the law, and reasonable compensation.

Examples of cases involving professional fees include the following:

- The Court of Appeals for the Sixth Circuit determined that a former Chapter 11 professional was compelled to disgorge interim compensation after the debtor's case was converted to Chapter 7 and there were insufficient funds to pay all administrative costs. The Bankruptcy Code requires pro rata payment within similarly situated classes of claimants. The debtor's attorney had received a retainer from which his hourly compensation was to be drawn after court approval. After the case was converted to Chapter 7, the court approved interim payment from the retainer. At the end of the case, the bankruptcy estate did not have enough to pay all administrative costs. The attorney was ordered to return the difference between his interim compensation and his pro rata share, so that all five entities with administrative claims in the Chapter 11 case could receive payment. He objected to the disgorgement. The bankruptcy court, district court, and court of appeals all agreed with the U.S. Trustee, ruling that the disgorgement was



KATHERINE VANCE

mandatory to achieve pro rata payment of all administrative claimants.

- The Court of Appeals for the Seventh Circuit ruled for the U.S. Trustee in a case where the debtor sought administrative expense priority for attorneys' fees incurred in defending an action against the bankruptcy trustee. The debtor relied upon a U.S. Supreme Court decision in which a trustee's negligence gave rise to damages that were entitled to priority payment. The appeals court affirmed the decisions by both the bankruptcy court and the district court that the Supreme Court case did not apply here.

- Citing the Tulsa office's arguments regarding the need for counsel to be free of conflicting loyalties, the Bankruptcy Court for the Northern District of Oklahoma denied a law firm's application as counsel for a Chapter 11 debtor. The firm disclosed it intended to serve as debtor's counsel while continuing to represent the parent company, which held a \$9 million claim against the debtor. In the same case, the bankruptcy court significantly modified the terms of employment for the debtor's chief restructuring officer. The U.S. Trustee argued the proposed expansive indemnity agreement far exceeded the protections that should reasonably be provided under the circumstances of the case. The court struck the indemnity agreement, as well as a provision to award a \$300,000 success fee if a substantial portion of the estate's assets were sold. The court indicated the Bankruptcy Code provides procedures under which professionals who achieve exceptional results may request fee enhancements.

- The Bankruptcy Court for the Northern District of Georgia denied in part the compensation requested by a Chapter 11 debtor's consultant and tax service provider that sought \$834,593 in fees and \$15,981 in expenses. The Atlanta office objected to the request, seeking partial denial because the provider was not continuously disinterested: for part of the time during which the

debtor marketed its assets, the provider represented the debtor as well as a potential acquirer of the assets. Finding the provider not continuously disinterested, the court denied \$324,384 in compensation and \$3,764 in expenses.

- A law firm agreed to withdraw as Chapter 11 debtor's counsel after the Wilmington office filed an objection challenging the retention for lack of disinterestedness and actual conflicts of interest. The firm also agreed not to seek approximately \$160,000 in compensation for the value of services provided to the debtor, or to seek out-of-pocket expenses. The firm regularly represented the debtor's largest shareholder, which held 62 percent of the debtor and became a secured creditor within two months before the bankruptcy filing. In addition, it simultaneously represented multiple parties, including the largest shareholder and the debtor's CEO, in a proposed merger transaction that terminated on the eve of bankruptcy. The firm failed to fully disclose much of this information in its application for retention.

- The Boston office obtained professional fee reductions totaling \$896,899 in five related Chapter 11 cases. A Chapter 11 trustee had been appointed to conduct sales of, and/or shut down, the debtors' facilities. Six financial advisors and attorneys employed by the debtor and the creditors' committee sought fees exceeding \$3 million, but the U.S. Trustee objected, arguing their efforts did not benefit the estate, which had become administratively insolvent. The U.S. Trustee obtained reductions averaging 30 percent, and certain professionals further agreed to subordinate part of their approved fees to administrative claims asserted by post-petition trade creditors.

- The Bankruptcy Court for the District of Nevada reduced by 50 percent the fees of the general bankruptcy counsel for a Chapter 11 debtor and disqualified two other firms as special counsel—in total, saving the estate \$521,000 in fees. The general bankruptcy counsel had failed

“This case highlighted the U.S. Trustee’s key role in providing oversight in Chapter 11 cases, protecting the interests of unsecured creditors, and helping to ensure that parties adhere to the requirements of the Bankruptcy Code. The proposed debtor’s counsel had served as the law firm for the parent company and all of its subsidiaries for over 50 years. The firm thought it could continue in that role regardless of the intervening bankruptcy, even though for decades it had presided over the intertwined transactions of the related entities.”

Katherine Vance, Assistant U.S. Trustee, Tulsa



“The debtors provided hundreds of photocopied pictures of what they claimed were Ming and Song dynasty artifacts, which they called ‘the treasure.’ They said they recovered the artifacts from underwater wrecks and stored them in Kuala Lumpur, New Jersey, Los Angeles, Las Vegas, and Tampa. Trial Attorney Marjorie Lakin Erickson and Bankruptcy Analyst George Griffith showed that the debtors’ repeated inconsistent statements regarding which individuals and companies allegedly owned these assets, and their failure to properly insure ‘the treasure’ or account for their financial affairs, required the conversion of the case and appointment of a Chapter 7 trustee.”

*Jennifer Braun,
Assistant U.S. Trustee,
Woodland Hills*

to timely seek his or special counsel’s appointment. Eleven months into the case, on the eve of a hearing, two firms sought retroactive approval of appointment as special counsel. The Las Vegas office objected due to conflicts and the lack of a basis for retroactive appointment, but the court approved limited appointments. The U.S. Trustee sought reconsideration and moved for disqualification based on actual conflicts and one firm’s lack of candor regarding its prior representation of insiders. The court found the firms had actual conflicts, vacated the prior orders, and disqualified the firms.

- The Bankruptcy Court for the District of Delaware sustained the Wilmington office’s objections to almost \$2.5 million in applications for compensation and reimbursement from various professionals and others in a Chapter 11 case. The court denied requests from the debtor’s financial adviser for a \$1.5 million success fee; a creditors’ committee member and associated parties who argued they made a “substantial contribution” to the bankruptcy estate; and two shareholders and their counsel who argued they made a “substantial contribution” by seeking appointment of an examiner.

- A law firm withdrew as Chapter 11 debtor’s counsel and withdrew its application for compensation of \$83,710 and reimbursement of \$6,782 in expenses, after the Sioux Falls office moved to vacate the appointment order. In the application for employment and affidavit of disinterestedness, the debtor and the law firm indicated the firm had no prior relationship with any creditor. However, the U.S. Trustee discovered a prior relationship between the firm and a group of investors in the debtor who were also creditors in the case. It appeared that the investors directed much of the law firm’s work. After withdrawing as debtor’s counsel, the law firm filed a notice of appearance for the investors.

Preventing Delay and Preserving Assets

The U.S. Trustee takes action to prevent undue delay in Chapter 11 cases and to ensure that proper procedures are followed to preserve and enhance the value of estate assets for potential distribution to creditors. For example:

- On motion of the Woodland Hills office, the case of a married couple who recovered ancient artifacts from wrecks at sea was converted from a Chapter 11 reorganization to a Chapter 7 liquidation by the Bankruptcy Court for the Central District of California. The court ordered the debtors to cease all business operations and turn over all assets to the Chapter 7 trustee. The debtors listed \$10 million in artifacts allegedly located around the United States and in Kuala Lumpur. At the Section 341 meeting they disclosed they may have an additional \$5 million in other antiquities, as well as approximately 400 pieces they might own in the Philippines. They conceded they had no inventory list or insurance, had not filed tax returns, and may have put the assets in the name of one of their companies.

The U.S. Trustee takes action to prevent undue delay in Chapter 11 cases and to ensure that proper procedures are followed to preserve and enhance the value of estate assets for potential distribution to creditors.

- In a ruling that ensured priority payment of approximately \$190,000 in gift certificate claims, the Bankruptcy Court for the District of Delaware sustained the Wilmington office’s objection to a Chapter 11 liquidation plan proposed by the debtor and the unsecured creditors’ committee. The bankruptcy court agreed with the U.S. Trustee that the meaning of the statutory term “deposits” was not limited to down payments or partial payments for specific merchandise.

CHAPTER 6

TRUSTEE OVERSIGHT



Photo 1: Linda Aguilar, Darlene Walker

Photo 2: First row: RaNae Inghram, assistant to Chapter 7 trustee Jim Inghram; Chapter 7 trustees Jim Inghram, Cindy Hagan; Second row: Chapter 7 trustees Bob Bruegge, John Swartz; Third row: Chapter 7 trustees John Maloney, Glenn Barmann; Vicky Giesen, assistant to Chapter 7 trustee Michelle Vieira; Chapter 7 trustees Michelle Vieira, Laura Grandy; Fourth row: Mark Skaggs, Sabrina Petesch, Eulunice Boddie, Jennie Gallagher, Joyce Barnett

Bankruptcy cases in Chapters 7, 12, and 13 are administered by private bankruptcy trustees appointed and supervised by the U.S. Trustee. The private trustee administers assets for the benefit of creditors and has the legal duty to act in the best interest of creditors and the estate.

The U.S. Trustee Program promotes the effectiveness of the bankruptcy system by appointing and supervising private trustees who administer bankruptcy cases expeditiously and maximize the return to creditors. The Program trains trustees and evaluates their overall performance, reviews their financial operations, ensures the effective administration of estate assets, and intervenes to prevent loss of estate assets when embezzlement, mismanagement, or other improper activity is discovered. In such cases, the Program organizes a team of professionals to reconstruct financial records and assist in any civil and criminal enforcement actions.

Chapter 7 Trustees

Trustees administering Chapter 7 cases closed more than 47,000 asset cases during FY 2004, generating \$1.63 billion in funds. This is the largest number of asset cases closed in one year since the Program began keeping these records in 1992.

Trustees administering Chapter 7 cases closed more than 47,000 asset cases during FY 2004, generating \$1.63 billion in funds.

Appointment

Chapter 7 trustees are often referred to as “panel trustees” because they are appointed by the U.S. Trustee to a panel in each judicial district, for a one-year renewable term. Panel trustees are not government employees, and many of them have a separate business or profession

such as a law or accounting practice. A trustee’s appointment to the panel is conditioned upon the successful completion of a background investigation, and trustees are subject to re-investigation every five years.

Once the trustees are appointed to the panel, Chapter 7 cases generally are assigned to each trustee through a blind rotation process. The Chapter 7 trustee collects the debtor’s assets that are not exempt from creditors, liquidates them, and distributes the proceeds to creditors. As of September 30, 2004, 1,222 trustees served on Chapter 7 panels throughout the United States and its territories (excluding North Carolina and Alabama). Chapter 7 trustees were appointed to 1,114,622 cases in FY 2004.

Oversight Duties

In FY 2004, the Program focused on strengthening panel trustee accountability, increasing the number of smaller asset cases administered for the benefit of creditors, and further streamlining panel trustee oversight.

The Program worked with the National Association of Bankruptcy Trustees, a membership organization of panel trustees, to obtain adoption of a Chapter 7 Trustee Pledge of Excellence. Modeled after the Standing Trustee Pledge of Excellence adopted in FY 2002 by the trustees who administer cases under Chapters 12 and 13, the Chapter 7 Pledge of Excellence serves as a reminder that Chapter 7 trustees are committed to excellence in the administration of bankruptcy cases and carry out their duties with integrity, diligence, and professionalism. Copies of the pledge were distributed to all Program field offices and Chapter 7 trustees in the geographic areas served by the Program.

Program staff conducted numerous local conferences and meetings to help trustees improve their administration of cases. Many of these sessions focused on the proper administration of smaller asset cases, which generally results in a

significant return to unsecured creditors at a relatively low cost.

Since FY 2001, the Program has undertaken steps to streamline its oversight of Chapter 7 trustees, continuously reviewing its activities and procedures for cost- and time-saving opportunities. In FY 2004, the Program made policy changes to facilitate electronic record keeping and maintenance of paperless accounting systems by Chapter 7 trustees, and to reduce administrative requirements relating to review of trustee final reports and final accounts. The Program also implemented policies governing the applicability of the Check Clearing for the 21st Century Act to Chapter 7 case administration.

Chapter 12 and Chapter 13 Trustees

Nationwide, the standing Chapter 13 trustees collected almost \$5 billion in FY 2004, averaging approximately \$26 million per trustee, with the largest trustee operations administering over \$100 million. During the same period, the Chapter 12 trustees collected almost \$33 million, averaging more than \$634,000 per trustee.

Chapter 13 trustees collected almost \$5 billion in FY 2004, averaging approximately \$26 million per trustee, with the largest trustee operations administering over \$100 million. Chapter 12 trustees collected almost \$33 million, averaging more than \$634,000 per trustee.

Appointment

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

ing trustees evaluate the financial affairs of the debtor, make recommendations to the court regarding confirmation of the debtor’s repayment plan, and administer the court-approved plan by collecting payments from the debtor and disbursing the funds to creditors.

Standing trustees are not government employees. The qualifications for appointment as a standing trustee are established by the Attorney General under 28 U.S.C. § 586(d) and published at 28 C.F.R. § 58. A standing trustee appointment may result from the departure of a prior trustee or the need for an additional trustee in a geographic area. The appointment of a standing trustee is conditioned upon the successful completion of a background investigation, and standing trustees are subject to re-investigation every five years. During FY 2004, there were 189 Chapter 13 standing trustees and 48 Chapter 12 standing trustees.

Standing trustee operations vary from place to place. For example, some trustees are assigned an entire state, while others handle cases in a single metropolitan area. Some are the sole trustee in a geographic area; some share a geographic area with other trustees. Staff sizes range from two employees to 49. These differences arise from the need to accommodate variances in filing rates and population density.

Oversight Duties

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

Given the significant volume of funds flowing through the standing trustee operations, the Program must ensure that trust funds are adequately protected from theft and from incorrect disbursement caused by inadequate or faulty procedures. The Program uses several mechanisms to review case administration, financial controls, and other aspects of trust activity.

Chapter 13 trustees are audited annually by independent accounting firms; Chapter 12 trustees, who administer a significantly lower volume of receipts, are audited every three years. These audits cover not only financial matters but also management issues such as compliance with Program policies and internal control processes. Program staff work with standing trustees to resolve deficiencies disclosed in the audits. During FY 2004, audits were conducted on all Chapter 13 trustees.

As an additional monitoring tool, Program staff periodically evaluate the standing trustees in several key performance areas. The trustees receive a written evaluation report. All Chapter 13 trustees were evaluated in FY 2004.

Moreover, local Program staff visit trustee offices to review and report upon case administration and financial controls. In addition, in special circumstances the Program may send a team of attorneys and analysts with expertise in Chapter 13 oversight to review a standing trustee's practices and procedures and make recommendations. Two such reviews were conducted in FY 2004.

The principles set forth in the Standing Trustee Pledge of Excellence, adopted by the standing trustees in FY 2002, continue to guide the standing trustees in the administration of cases. The principles identify core themes in terms of a Chapter 13 trustee's commitment to service. They make clear that the standing trustees agree to provide creditors, debtors, attorneys, judges, and others with service that adheres to the highest standards of professional, moral, and ethical conduct.

Computer Security

Distribution of fiduciary funds in a manner that ensures accuracy and safety requires increasing reliance upon information technology. To help standing trustees protect their computer systems and mitigate risks to both funds and data, in FY 2003 the National Association of Chapter Thirteen Trustees (NACTT), with the assistance of the

Program, launched an information technology security initiative, the Standing Trustee Alliance for Computer Security or STACS. STACS is run by an independent contractor selected by NACTT after a competitive bid process. By the end of FY 2004, more than half of the Chapter 13 trustees participated in STACS.

Distribution of fiduciary funds in a manner that ensures accuracy and safety requires increasing reliance upon information technology.

STACS features include annual security assessments of all information technology services, including Internet and telecommunications services; security awareness training and materials; assistance with implementation and maintenance of security tools such as firewalls and intrusion detection systems; computer virus noticing and remedies; and a unique set of best practices for the standing trustees.

Trustee Training

The Program conducts and participates in local and regional training sessions and helps to establish mentoring relationships between experienced and "newer" trustees. Program staff regularly coordinate with the trustees' professional organizations to provide programs with a national perspective during their conferences.

In FY 2003, the Program launched a uniform national training session for recently appointed Chapter 13 trustees at the National Bankruptcy Training Institute, which is located at the National Advocacy Center, a Department training facility on the campus of the University of South Carolina in Columbia. In FY 2004, the Program initiated a similar training session for recently appointed Chapter 7 trustees. (See Chapter 9.)

CHAPTER 7

PLANNING, EVALUATION, AND COMMUNICATIONS



Photo 1: Clifford J. White, III; Bankruptcy Judge A. Thomas Small, Eastern District of North Carolina; Christopher Cannon, Chairman, Subcommittee on Commercial and Administrative Law, Committee on the Judiciary, U.S. House of Representatives

Photo 2: Jeanne Howell, Karen Bakewell, Ed Flynn, Pat Santos, Steven Dillingham, Jane Limprecht, Bonita Soley, Sondra Martin-Holley

The need to demonstrate and measure results is imperative for all federal programs. The Program engages in planning to ensure that it carries out its mission with clear goals and achieves measurable results. In addition, the Program conducts and coordinates research and evaluation, and engages in public outreach, to ensure accountability in its activities, improve its policies and practices, and expand general knowledge about the bankruptcy system.

Planning

The mission of the U.S. Trustee Program, as set forth in the Department of Justice's *Strategic Plan for Fiscal Years 2003-2008*, is to "Protect the integrity and ensure the effective operation of the Nation's bankruptcy system."

In FY 2004, the Program began to develop its strategic plan covering FY 2005 through FY 2010, with goals clearly aligned with specific objectives and measures. The Program's plan reflects its continuing transformation into 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 Program began to develop its strategic plan covering FY 2005 through FY 2010, with goals clearly aligned with specific objectives and measures. The Program's plan reflects its continuing transformation into a high-performance, litigating component of the Department of Justice.

The Program's strategic plan, to be distributed to all employees in FY 2005, discusses the Program's mission, vision, values, goals, challenges, evaluations, and partnerships. The plan provides a foundation for future strategic planning and continuous operational improvements. It will be reviewed and revised annually, and will be consistent with the requirements of the Government Performance and Results Act of 1993 and the President's Management Agenda. It will also tie into the Department's Strategic Plan and the Attorney General's Management Initiatives. The plan will be integral to the Office of Management and Budget's (OMB) Program Assessment Rating Tool (PART) review of the U.S. Trustee Program.

In FY 2004 the Program began preparing for the OMB's PART review, to be completed in FY 2005. The PART was developed to assess and improve program performance so the federal government can achieve better results. The review helps identify a program's strengths and weaknesses, to inform funding and management decisions aimed at making the program more effective.

Factors that affect and reflect a program's performance review include:

- Purpose and design, to assess whether the program's purpose and design are clear and sound.
- Strategic planning, to assess whether the program has valid long-term and annual measures and targets.
- Management, to rate agency management, including financial oversight and program improvement efforts.
- Results/accountability, to rate program performance on measures and targets reviewed in the strategic planning section and through evaluations.

The review includes a consistent series of analytical questions and allows programs to show improvements over time.

Performance Measurement

The measurement of agency performance is central to ensuring that the Program successfully implements performance-based management practices and operates as a high-performance organization. The Program recognizes that the potential of its strategies and plans ultimately depends upon execution and performance. Accordingly, performance measures are critical to closing potential strategy-to-performance gaps often experienced in organizations.

In FY 2004 the Program began implementing a “balanced scorecard” approach to tracking its performance. This approach involves considering and weighing competing and alternative factors, including: financial and non-financial factors, internal and external factors, and lag and leading indicators of performance. The development and enhancement of Program performance measures was the topic of briefings to senior Department officials, senior Program managers, and Program employees. The discussions focused upon the use and importance of performance measures and the development of improved measurement systems.

The Program embraced three primary goals and identified various objectives that promote those goals. For example, the first Program goal of “protecting the integrity of the bankruptcy system” is served through the objective of “ensuring compliance with bankruptcy laws and rules.” Measures for this objective include formal and informal enforcement actions, such as: substantial abuse motions, objections to debt discharge, and motions/complaints against petition preparers, attorneys, creditors, and others. Other measures of compliance include: criminal referrals and case assistance; dollars discharged and not discharged; and results of financial reviews and audits. Throughout its performance enhancement initiatives, the Program seeks to identify and measure objectives that are vital to the Program’s goals and that evidence progress in obtaining results.

The Program continues to analyze operational data, both nationally and at regional and field levels, for the purpose of measuring organizational performance. The types of analytical reports include staffing and workload analyses used internally to allocate resources and increase efficiency. Similarly, Program analyses and performance data are used in reporting externally to oversight entities and the public. The Program continues to align its goals, objectives, and measures—and to link them to its strategies—as part of its long-term commitment to performance improvements.

Evaluation

Data Collection and Statistics

To measure and evaluate performance, the Program maintains various databases to supply statistical information. This information is used in various ways, including preparing the Program’s budget requests and responding to Congressional inquiries. Additionally, operational analysis and reports are provided to management. Ensuring and maintaining data integrity on a continuing basis is, therefore, paramount.

To measure and evaluate performance, the Program maintains various databases to supply statistical information. Ensuring and maintaining data integrity on a continuing basis is paramount.

To assist with this process, the Program has established working groups such as the Significant Accomplishments Reporting System Working Group. These working groups, which include Assistant U.S. Trustees and staff from the Executive Office, review reports, data entries, and definitions to identify common errors and incorrect or incomplete entries. The working groups also

recommend solutions and provide training to address deficiencies or changes to data and/or definitions.

The Program will create a Data Integrity Group in FY 2005 to oversee the data integrity operations of major databases such as the Significant Accomplishments Reporting System, the Criminal Enforcement Tracking System, and the Professional Timekeeping System. Once data is reviewed, it is made available to the Program and is often posted on the Program's Intranet site. A summary of key data is provided to the public and made available on the Program's public Internet site.

Debtor Audit Pilot Project

During FY 2004, the Program engaged in a six-month pilot project to assess the most effective methods for verifying the accuracy, veracity, and completeness of information reported by individual Chapter 7 debtors in their petitions, schedules, and statements. Program staff in 10 pilot offices selected 1,561 cases, either randomly or via targeted criteria, for review by certified public and forensic accounting and investigative firms.

Debtors whose cases were chosen for audit were requested to answer a number of questions and provide certain documents. The accounting and investigative firms reviewed the responses and documents, and searched commercial and public databases to determine whether debtors had materially misstated income, expenditures, or assets.

Results from the pilot project informed the Program regarding the use of external auditors in identifying misstatements and errors commonly found on debtors' schedules and statements. This project is critical to the Program's future efforts to assess types and potential levels of fraud, abuse, and error in the bankruptcy system, as well as options for safeguarding the accuracy of bankruptcy filings.

National Study on Fraud, Abuse, and Error

Building upon the result of the debtor audit pilot project, in FY 2004 the Program began its plans for a national study to examine fraud, abuse, and error in the bankruptcy system. The study will be conducted by a reputable research entity and coordinated by the National Institute of Justice, an evaluation component of the Department. The research effort will include scholars, practitioners, and representatives of organizations and entities responsible for ensuring accountability and integrity within the bankruptcy system.

The national study will focus on two primary areas. First, the study will obtain practical, applied information through methods such as reviewing research literature and practices pertinent to bankruptcy fraud, abuse, and errors. Second, the study will engage in evaluation and research, identifying promising approaches for preventing and responding to fraud, abuse, and errors in the bankruptcy system.

Communications

Congressional Affairs

Program staff coordinate with the Department's Office of Legislative Affairs (OLA) to respond to inquiries regarding bankruptcy-related legislative initiatives. Responses on behalf of the Program are prepared and submitted through OLA to requests and inquiries from Congressional committees, members of Congress, and their staffs. In addition, Program staff provide guidance to field personnel regarding communications with local officials.

Public Affairs

Program staff participate in a variety of outreach activities that increase public knowledge about the nation's legal and bankruptcy systems, ranging from hosting foreign officials to providing information at community fairs.

Program staff participate in outreach activities that increase public knowledge about the nation's legal and bankruptcy systems, ranging from hosting foreign officials to providing information at community fairs. The Program also promotes financial education outreach efforts that help consumers improve their money management skills.

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

To increase public understanding about bankruptcy and the U.S. Trustees' responsibilities and policies, the Program serves as a resource for media inquiries about bankruptcy and publishes regular columns in several publications. Program employees also write articles for bar association journals, accountancy journals, and other professional publications.

Financial Education Outreach

The Program also promotes financial education outreach efforts that help consumers understand how to manage their money and perhaps avoid the financial distress that leads to bankruptcy. The Program embraces and encourages financial education programs that help consumers improve their money management skills. Pro-

gram staff work with judges, bankruptcy trustees, lawyers, and others to encourage educational programs for consumers. In addition, the Program forms partnerships with other government agencies and community groups to promote financial management education.


In FY 2004 the Program developed a brochure providing basic financial education pointers and linking to other online resources. This brochure was widely distributed and was posted on the Program's Internet site. The Program also worked with Chapter 13 trustees who conduct financial education classes for debtors in repayment plans. In addition, Program employees volunteered to teach basic financial education information in schools, community fairs, and other locations.

The following are examples of Program involvement in financial education outreach:

- Lawrence Friedman, Director of the Executive Office for U.S. Trustees in FY 2004, joined Chief Bankruptcy Judge John C. Ninfo, II, of the Western District of New York and other officials to present a financial education program to approximately 500 high school juniors and seniors in West Bloomfield, Mich. The presentation was drawn from the Credit Abuse Resistance Education (CARE) Program developed by the judge, and was videotaped for the school district's cable television network. The CARE Program enlists bankruptcy judges, U.S. Trustee personnel, private trustees, and attorneys to alert middle school, high school, and college students to the serious consequences of financial illiteracy and mismanagement of money.

- Working with immigrant societies, the Chicago office gave presentations on money management and the wise use of credit to groups of immigrants from China, Cambodia, and Russia.

- The Rochester Assistant U.S. Trustee participated in CARE Program presentations to educate high school and college students on basic



principles of financial management, with the goal of helping them avoid future financial distress that can lead to bankruptcy.

- A trial attorney in Wilmington provided volunteer financial education training to Chapter 13 debtors in cooperation with a Chapter 13 trustee and a bankruptcy judge's law clerk. He discussed financial planning, budgeting, and money saving techniques to assist Chapter 13 debtors in completing their repayment plans.

CHAPTER 8

INFORMATION SYSTEMS AND TECHNOLOGY



Photo 1: Mary McKinnon, Linda Petronchak, Krishna Singho, Linda Johnson, Monique Bourque

Photo 2: First row: Dan Ebright, Keith Manikowsk; Second row: Bernadette Onstad, Debbie Malik, Mary McKinnon

The sustained growth in bankruptcy case filings, the federal court system's migration to electronic case filing, and the Program's increased focus upon civil and criminal enforcement require continued enhancement of information technology systems. During FY 2004, the Program continued to modernize its automated case management system, pilot-tested and implemented the new Criminal Enforcement Tracking System, and pilot-tested digital recording technology, while launching several other new automation efforts and enhancing existing ones. The Program also maintained the automated systems it uses to perform core functions that include managing more than one million new cases each year, supervising private trustees, appearing as a party in court, and collecting statutorily imposed fees.

The Program continued to modernize its automated case management system, pilot-tested and implemented the new Criminal Enforcement Tracking System, and pilot-tested digital recording technology, while launching other new automation efforts and enhancing existing ones.

Criminal Enforcement Tracking System

In FY 2004, after conducting a pilot test in several offices, the Program implemented a nationwide Criminal Enforcement Tracking System (CETS) to track preliminary allegations, the Program's criminal referrals, and the Program's assistance in investigations by law enforcement agencies. CETS allows a user to initiate a file on a preliminary allegation or assistance with an investigation; enter basic information concerning the allegation or assistance; enter actions and events such as referral, assignment of case number, indictment, disposition, and sentencing; and record comments.

CETS helps the Program track criminal enforcement efforts and provides more accurate and timely information to the Department, Congress, and others concerned about the investigation and prosecution of bankruptcy fraud.

Automated Case Management System

The Program's work has long been supported by a decentralized case management system called the Automated Case Management System (ACMS), designed to support the U.S. Trustees' role in managing bankruptcy cases and monitoring the work of private trustees. In FY 2001, the Program began modernizing ACMS to improve user access, integrate multiple data bases, and meet the long-term goal of a centralized computing system.

The first step in this process involved rewriting the original code to allow ACMS data to be combined with information in other data bases and applications. In FY 2003, the Program began to copy or "replicate" daily data from three pilot regions to a central data base. This effort was expanded and completed in FY 2004, and the Program now has a central repository of all critical ACMS data. Also in FY 2004, the Program procured the equipment necessary to function as the centralized computing system and provide a duplicate system at an offsite location in the event of a disaster.

Electronic Case Filing

Over the past several years, the federal courts have moved toward the use of an Internet-based electronic case filing system (ECF or e-filing) for the electronic submission of documents to, from, and within the courts. The bankruptcy courts are at the forefront of this move. By the end of FY 2004, 13 more bankruptcy courts had implemented ECF, for a total of 70 out of 94.

ECF offers many advantages, including the ability of parties to file pleadings and retrieve

electronically filed documents from any location at any time. Further, ECF reduces the delay between the time a document is electronically filed with the court and the time it is available to the public for review.

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

In FY 2004, senior Program officials continued to work with representatives of the Department and the Judiciary to address these matters and recommend policy changes. In addition, Program technical personnel consulted regularly with an ECF technical group from the Administrative Office of the U.S. Courts (AOUSC) and participated in an ECF working group within the Department. For all bankruptcy courts that have implemented ECF, the technical group implemented a new procedure that streamlined the daily exchange of case management data between the courts and the Program. A long-term goal of the Program is to enhance the data exchange process with the courts by developing national standards for “data enabling” portable document format (PDF) documents. To that end, during FY 2004 the Program continued to research and work toward collaborating with the AOUSC on a national specification for data tags that can be embedded within a PDF document before it is filed with the court, so data can be easily located and extracted later.

Digital Recording

During FY 2004, the Program conducted a 10-office pilot test of possible digital recording options to enhance the official record of the Section 341 meeting of creditors. The pilot offices implemented parallel tests with existing tape recording technology; reviewed for ease of use, logistics, and functionality; and made recommendations. At the end of FY 2004, the Program procured digital recording technology to support all secured Section 341 meeting rooms.

CHAPTER 9

TRAINING



Photo 1: Dianna Chavez, Henry Hobbs

Photo 2: Ernest F. Hollings National Advocacy Center, Columbia, S.C.

Photo 3: Mary Tom, Deirdre Martini, Guy Van Baalen, Kim Lefebvre, Kathy Schmitt, Terese Cavanagh

National Bankruptcy Training Institute

Employee training sessions are held at the National Bankruptcy Training Institute, where the Program offers a full range of courses to enhance professional, technical, and management skills. The Institute, which opened in February 1999, is a part of the National Advocacy Center (NAC) located on the campus of the University of South Carolina in Columbia. The NAC, which is a cooperative partnership of the U.S. Attorney's Office of Legal Education, the Institute, and the National District Attorneys Association, offers training to federal, state, and local prosecutors and their staffs. Its state-of-the-art training facilities include five lecture halls, multi-purpose assembly and class rooms, mock trial court rooms, five computer labs, a video production studio, and other specialized spaces.

The Program offers a full range of courses to enhance employees' professional, technical, and management skills at the National Bankruptcy Training Institute.

The Institute offers courses for all Program employees, including secretaries, legal clerks, legal data technicians, case management specialists, computer specialists, standing trustee coordinators, paralegals, administrative assistants, financial analysts, and attorneys. During FY 2004, the Institute hosted more than 500 Program employee attendees at 10 training courses. It continued to provide civil enforcement training courses developed during the past several years, and introduced a new course on criminal bankruptcy fraud to enhance participants' skills in combating fraud and abuse in the bankruptcy system.

These employee training sessions were offered at the Institute in FY 2004. Some courses were offered more than once:

- Advanced Civil Enforcement
- Criminal Bankruptcy Fraud Training
- Negotiation Skills
- Finance Fundamentals
- Information Technology Specialist/Case Manager Training
- Litigation Support Seminar
- Support Staff Development

Training for Private Trustees

In FY 2003, the Institute provided its first training course for recently appointed Chapter 13 trustees, designed to enhance their skill levels, promote uniform standards, and supplement training on civil and criminal enforcement. In FY 2004, the Institute launched a similar training course for recently appointed Chapter 7 trustees.

In FY 2004 the Institute provided its first training course for recently appointed Chapter 7 panel trustees, covering all facets of case administration.

The prior year's Chapter 13 training session helped newer Chapter 13 trustees better understand their responsibilities, how to carry out those responsibilities, and the standard of performance to which they will be held. It provided a forum for newer trustees to learn from the experiences of seasoned trustees, while sharing their own experiences and posing questions and concerns. Taking into account the various roles fulfilled by the Chapter 13 trustee—including fiduciary, business person, purchasing agent, disbursing agent, manager, and legal reviewer—the agenda offered sessions on case administration, including case set-up, claims administration, and case monitoring and closing; office administration, including personnel issues and the trustee's roles

as manager and fiduciary; internal controls; civil and criminal enforcement; emerging issues in Chapter 13; and the standing trustee standards of excellence.

Similarly, the Chapter 7 training sessions helped newer Chapter 7 trustees enhance their ability to administer cases and, in particular, to identify assets. Taught primarily by seasoned trustees, the training sessions covered all facets of case administration, including conducting Section 341 meetings, finding assets and maximizing the return to creditors, monitoring cases, setting up an office with strong internal controls and efficient reporting systems, and fighting bankruptcy fraud and abuse. Chapter 7 training sessions were held in November 2003 and May 2004, teaching 81 recently appointed trustees.

Training for Other Professionals

In addition to its various 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 are often invited to speak to law enforcement agencies, bar associations, professional organizations, law schools, other government agencies, and other groups.

The Program offers regional and local presentations to inform and educate about the bankruptcy system and Program activities.

Examples of the Program's activities in FY 2004 include the following:

- The Assistant U.S. Trustee in Indianapolis helped organize and spoke at a seminar for attorneys volunteering to handle pro bono bankruptcy cases. The seminar focused on basic consumer bankruptcy law and included a presentation on

alternatives to bankruptcy such as credit counseling and debtor education.


- At the request of the Internal Revenue Service, staff from the Dallas office conducted training for Internal Revenue Service insolvency specialists regarding basic bankruptcy law, bankruptcy documents and procedures, and the detection and investigation of fraud in bankruptcy cases.

- The Oakland Assistant U.S. Trustee participated in a panel discussion on identity theft at a meeting of the San Francisco Federal Executive Board, an organization of federal agencies. Other participants included representatives from the U.S. Attorney's office, Federal Trade Commission, U.S. Postal Inspectors, and Secret Service.

- At a regional training program for National Labor Relations Board staff attorneys and investigators, the St. Louis Assistant U.S. Trustee and a Chapter 7 trustee provided an overview of the bankruptcy system, the financial information available in a bankruptcy case, and the role of the U.S. Trustee with emphasis upon civil enforcement. NLRB attorneys confront issues such as the application of the automatic stay in labor law enforcement proceedings and attempts to discharge judgments for back wages and penalties.

- The Houston Assistant U.S. Trustee joined a bankruptcy judge and a Chapter 13 trustee before the Houston Association of Debtors' Attorneys, to discuss issues including the implementation of changes in the Federal Rules of Bankruptcy Procedure relating to privacy and the redaction of Social Security numbers from bankruptcy documents.

- Attorneys who handle farm loan matters for the Department of Agriculture's Office of General Counsel received training from staff in the Harrisburg office on the role of the U.S. Trustee and the identification of bankruptcy fraud and abuse.



- An analyst and an attorney from the Wichita office spoke to approximately 200 accountants at a conference on accounting and auditing at Wichita State University. They discussed the U.S. Trustee’s role in combating fraud in the bankruptcy system.

- The Atlanta Assistant U.S. Trustee spoke to members of the Georgia Real Estate Fraud Prevention and Awareness Coalition about the U.S. Trustee’s civil enforcement initiative, focusing on the role of petition preparers, serial filers, and identity thieves in mortgage fraud schemes.

- Upon invitation from the Dean of the University of Oklahoma School of Law, the Oklahoma City Assistant U.S. Trustee participated in a presentation on “practical skills in bankruptcy” for third-year law school students.

CHAPTER 10

APPENDIX

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

U.S. Trustee Program Nationwide Office Locator			
Executive Office for U.S. Trustees Washington, D.C.	HAWAII Honolulu	MISSOURI Kansas City St. Louis	PUERTO RICO San Juan
Regional and Field Offices (BY STATE)	IDAHO Boise	MONTANA Great Falls	RHODE ISLAND Providence
Alaska Anchorage	ILLINOIS Chicago Peoria	NEBRASKA Omaha	SOUTH CAROLINA Columbia
Arizona Phoenix	INDIANA Indianapolis South Bend	NEVADA Las Vegas Reno	SOUTH DAKOTA Sioux Falls
Arkansas Little Rock	IOWA Cedar Rapids Des Moines	NEW HAMPSHIRE Manchester	TENNESSEE Chattanooga Memphis Nashville
CALIFORNIA Fresno Los Angeles Oakland Riverside Sacramento San Diego San Francisco San Jose Santa Ana Woodland Hills	KANSAS Wichita	NEW JERSEY Newark	TEXAS Austin Corpus Christi Dallas Houston San Antonio Tyler
COLORADO Denver	KENTUCKY Lexington Louisville	NEW MEXICO Albuquerque	UTAH Salt Lake City
CONNECTICUT New Haven	LOUISIANA New Orleans Shreveport	NEW YORK Albany Brooklyn Buffalo Central Islip New York City Rochester Utica	VIRGINIA Alexandria Norfolk Richmond Roanoke
DELAWARE Wilmington	MAINE Portland	OHIO Cincinnati Cleveland Columbus	WASHINGTON Seattle Spokane
FLORIDA Miami Orlando Tallahassee Tampa	MARYLAND Baltimore Greenbelt	OKLAHOMA Oklahoma City Tulsa	WEST VIRGINIA Charleston
GEORGIA Atlanta Macon Savannah	MASSACHUSETTS Boston Worcester	OREGON Eugene Portland	WISCONSIN Madison Milwaukee
	MICHIGAN Detroit Grand Rapids	PENNSYLVANIA Harrisburg Philadelphia Pittsburgh	WYOMING Cheyenne
	MINNESOTA Minneapolis		
	MISSISSIPPI Jackson		

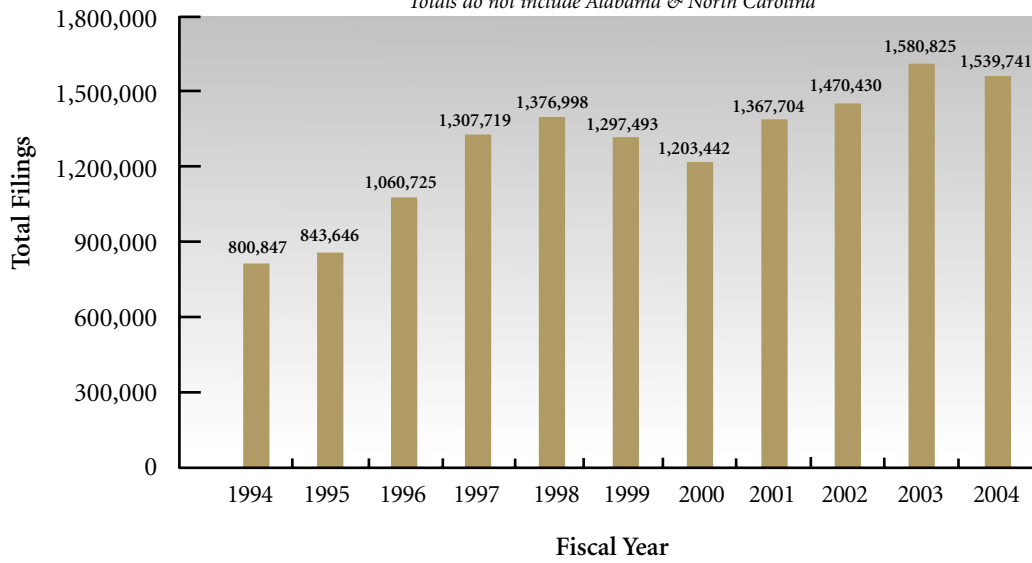
U.S. Trustee Program Civil Enforcement Actions—Fiscal Year 2004

Type of Action	Number of Inquiries and Formal Actions	Estimated Financial Impact
11 U.S.C. § 707(a) Dismissal for Cause	6,618	N/A
11 U.S.C. § 707(b) Dismissal for Substantial Abuse	28,181	\$275,012,979
11 U.S.C. § 727 Denial or Revocation of Discharge	3,465	\$192,500,983
11 U.S.C. § 110 Actions Against Bankruptcy Petition Preparers	2,254	\$2,917,755
11 U.S.C. § 329 Disgorgement of Attorneys' Fees	1,458	\$4,320,874
11 U.S.C. § 1104 Appointment of Trustee or Examiner	167	N/A
Actions for Attorney Misconduct	697	N/A
Total	42,840	\$474,752,591

Total Bankruptcy Filings Nationwide

Fiscal Years 1994-2004

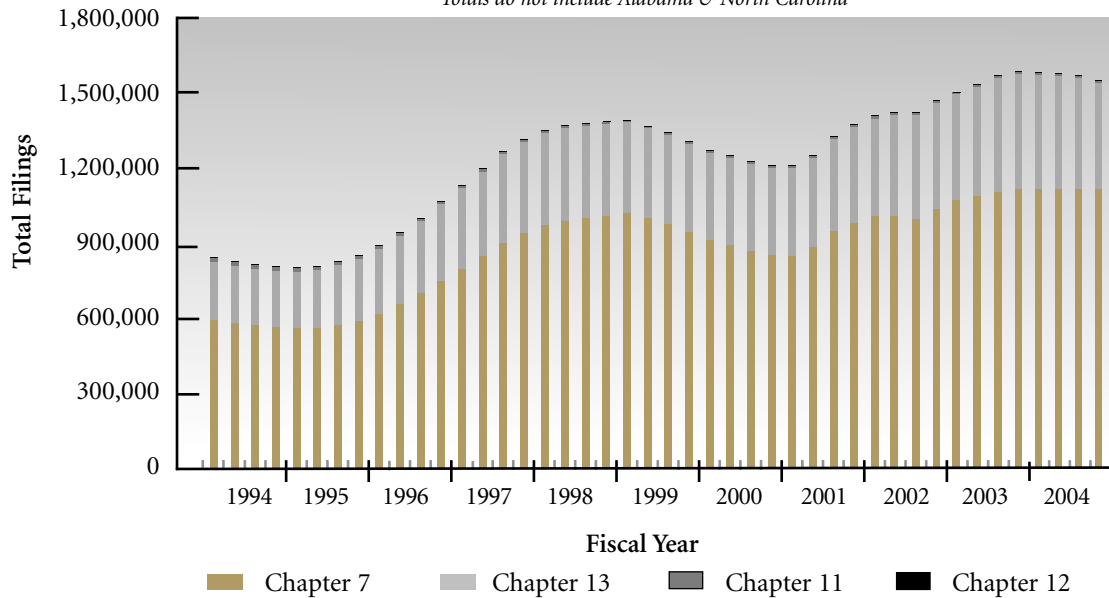
Totals do not include Alabama & North Carolina



Total Bankruptcy Filings by Chapter

Fiscal Years 1994-2004

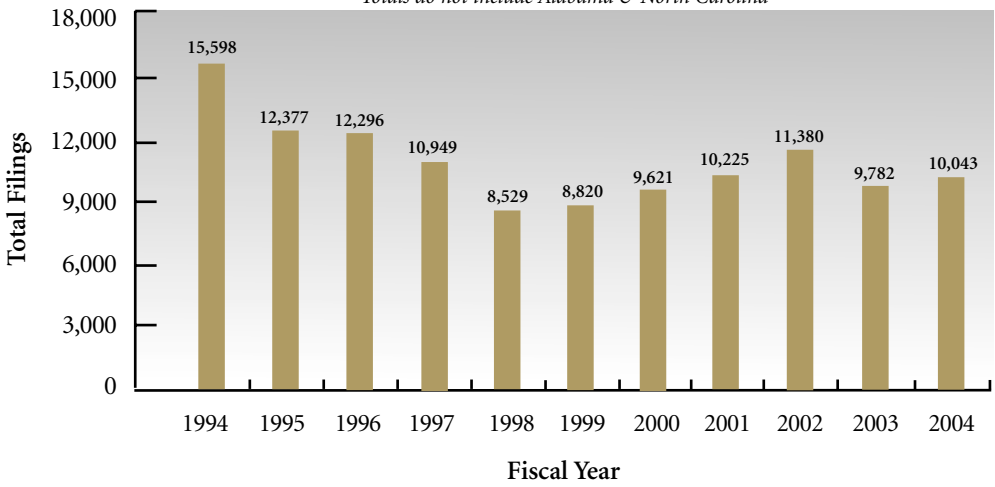
Totals do not include Alabama & North Carolina



Chapter 11 Filings Nationwide

Fiscal Years 1994-2004

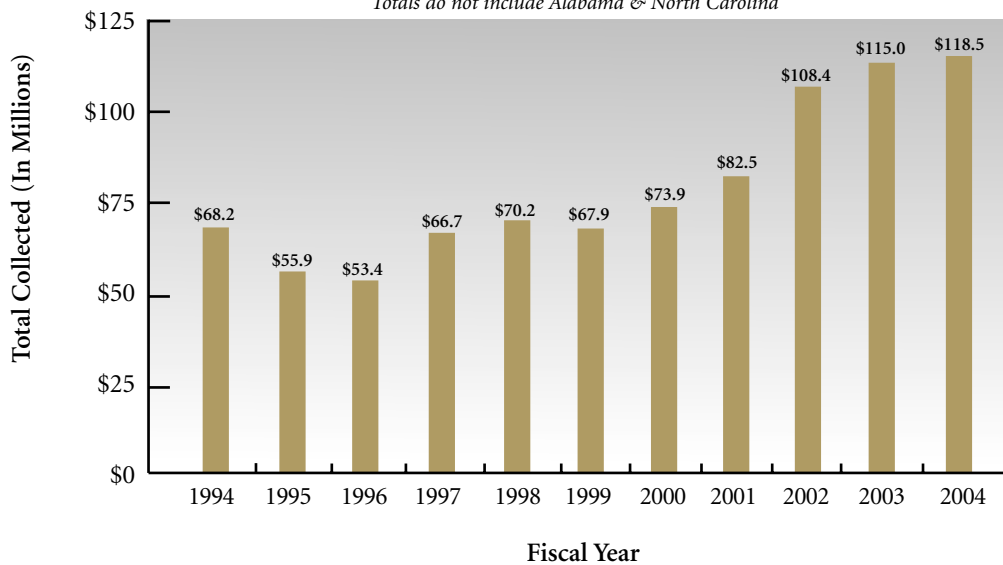
Totals do not include Alabama & North Carolina



Chapter 11 Quarterly Fee Collections

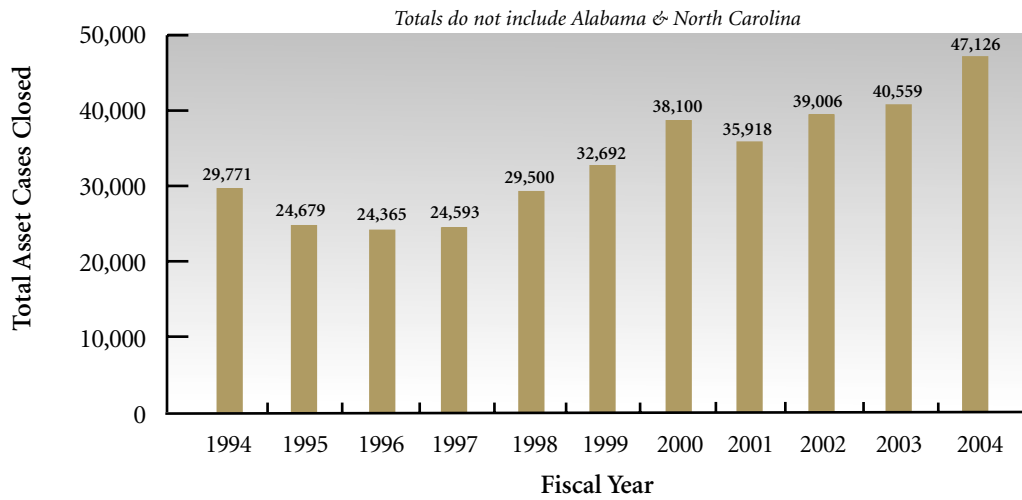
Total Collected Fiscal Years 1994-2004

Totals do not include Alabama & North Carolina



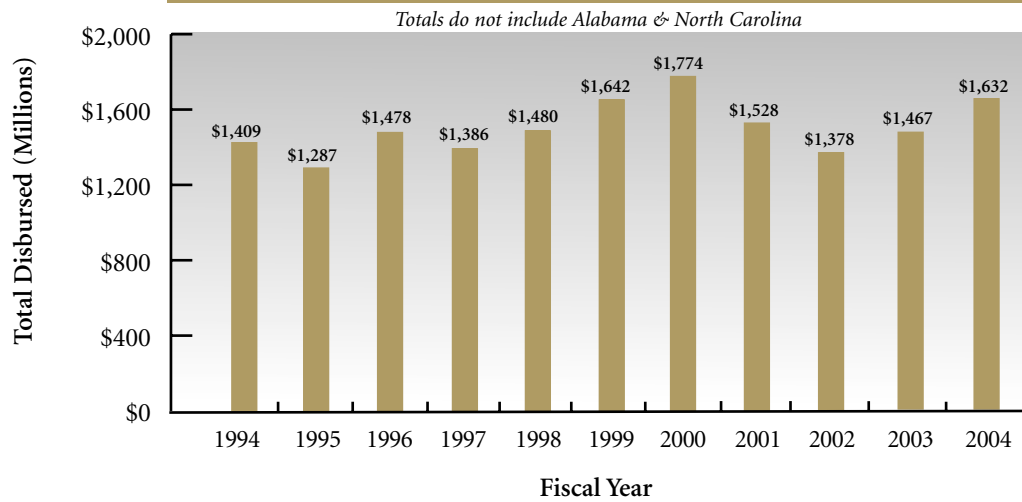
Chapter 7 Asset Cases Closed

Fiscal Years 1994-2004

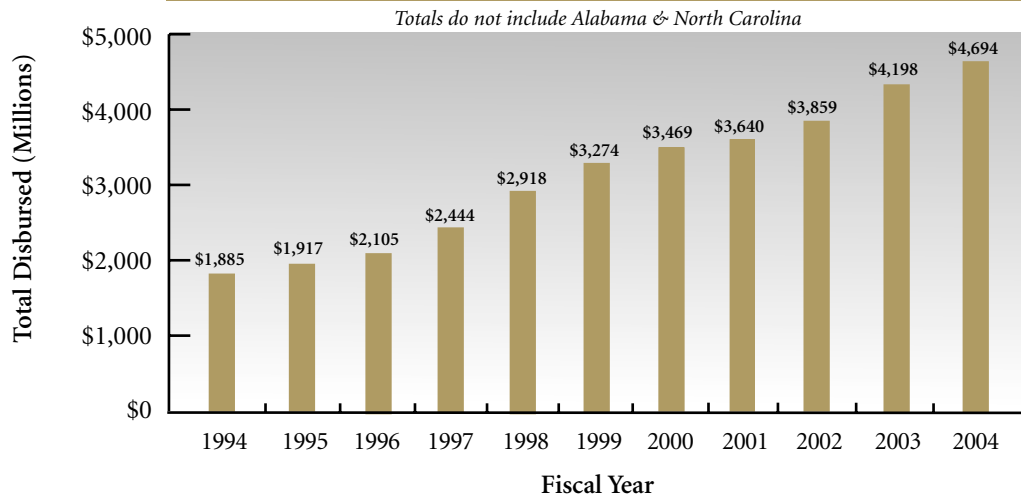


Chapter 7 Cases - Total Disbursements

Fiscal Years 1994-2004

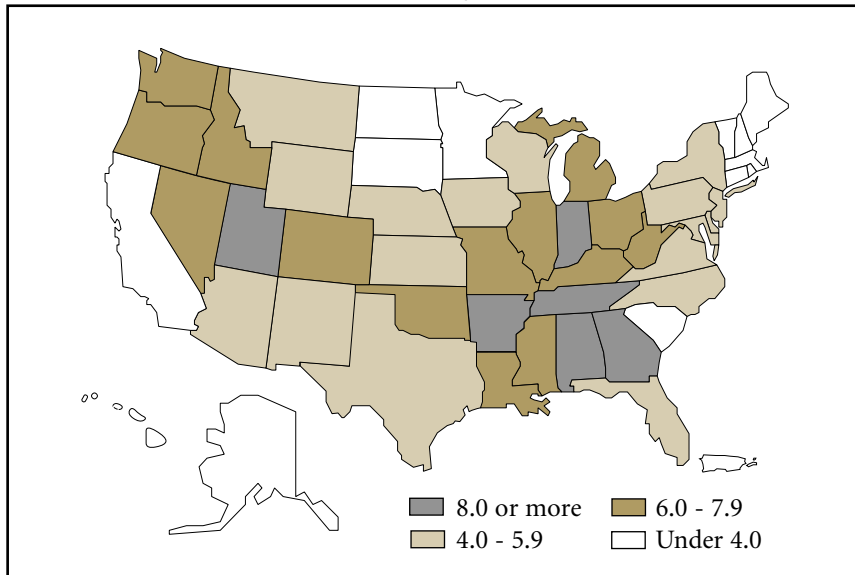


Chapter 13 Cases - Total Disbursements Fiscal Years 1994-2004

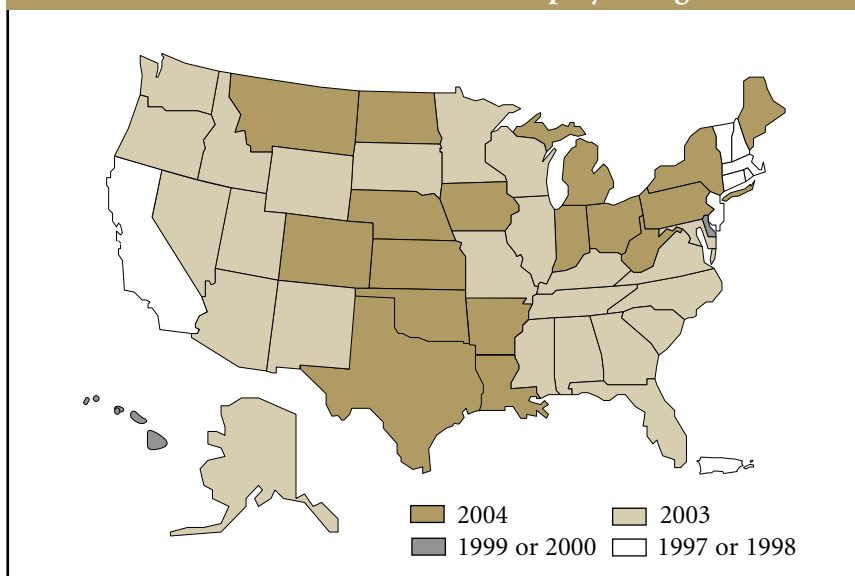


Bankruptcy Filings Relative to Population (Cases Filed Per 1,000 Population Fiscal Year 2004)

National Average = 5.44



Peak Fiscal Years for Bankruptcy Filings



Standing Trustee Pledge of Excellence

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

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

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

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

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

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

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

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

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

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

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

Chapter 7 Panel Trustee Pledge of Excellence

Chapter 7 Panel Trustees are committed to excellence in the administration of bankruptcy cases and carry out their duties with the utmost integrity, diligence, and professionalism. Creditors, debtors, attorneys, judges, and others who come into contact with Chapter 7 Trustees are entitled to service which adheres to the highest standards of professional, moral, and ethical conduct.

The trustee should identify and administer assets in a timely and comprehensive manner to produce maximum benefits for creditors and relief to debtors.

The trustee should conduct meaningful § 341(a) meetings of creditors and maintain a professional atmosphere that conveys the significance of the proceedings.

The trustee should act as a fiduciary who administers assets and makes decisions that are in the best interests of the estate.

The trustee should actively participate in every facet of the trustee operation and maintain efficient systems that accurately track case administration, chart the progress of cases, account for all property that comes into the trustee's possession, and generate accurate reports.

The trustee should maintain an appropriate and reasonably comprehensive system of internal controls over accounting and office operations to safeguard estate assets and trust funds.

The trustee should always be courteous in dealings with debtors, creditors, and other parties in interest.

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

The trustee should promote and preserve the integrity of the bankruptcy system by helping to detect fraudulent or abusive conduct.

The trustee should encourage debtors, creditors, attorneys, and other participants in the bankruptcy process to diligently perform their respective responsibilities according to the highest standards of professional, moral, and ethical conduct.

The trustee should diligently perform his or her responsibilities according to the Bankruptcy Code and Rules, and Handbook for Chapter 7 Trustees.

