



United States Trustee Program



Annual Report of
Significant Accomplishments
Fiscal Year 2005





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Message from Attorney General
Alberto R. Gonzales

With the passage of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA), the U.S. Trustee Program took on a host of new challenges in Fiscal Year 2005. The Program's new duties include serving as the principal enforcer of a means test that helps to determine eligibility for Chapter 7 bankruptcy, scrutinizing and approving pre-bankruptcy credit counseling agencies and pre-discharge debtor educators, helping to ensure that small businesses reorganize under expedited procedures, conducting important studies, and automating data collection and reporting systems in a way never before attempted.

Due to the hard work of Program staff throughout the country, the component has started to implement the BAPCPA's provisions. In addition to developing and immediately launching fully researched and well-crafted action plans, the Program represented the Department well as it contributed to the U.S. Judicial Conference's Advisory Committee on Bankruptcy Rules, coordinated with agencies such as the Internal Revenue Service, the Census Bureau, and the Federal Trade Commission, and reached out to creditor and debtor constituencies.

In the midst of this effort, the Program also provided an exemplary response to the challenges presented by Hurricane Katrina. It provided assistance and support to its staff members in Louisiana and Mississippi, efficiently handled business matters by quickly transferring staff and workload, and developed flexible policies and practices to minimize hardships faced by hurricane victims who may have needed to file for bankruptcy relief.

One of the many reasons I am confident of the Program's continued success is the teamwork demonstrated by Program employees. The President's Management Agenda calls for all federal agencies to measure the costs and benefits of their activities. In Fiscal Year 2005, the Office of Management and Budget reviewed the Program's efficiency and effectiveness under the Performance

Assessment Rating Tool (PART). The Program received the highest possible rating, as well as the highest score given to a Department of Justice component since PART reviews have been conducted.

The diligence and commitment to the law demonstrated by Program employees across the country have won the admiration of all constituencies in the bankruptcy system. I know the Program will continue to be a source of pride to the Department of Justice as it serves the American people by enhancing the efficiency and effectiveness of the Nation's bankruptcy system.



Message from Acting Director
Clifford J. White, III

The most pressing responsibility to face the United States Trustee Program in Fiscal Year 2005 was the successful implementation of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA). This law gave the Program major new tools and responsibilities to enhance the integrity and efficiency of the bankruptcy system for the benefit of all parties and in the public interest. After the BAPCPA was signed into law on April 20, 2005, the Program embarked upon an intensive effort to prepare for the Act's general effective date of October 17, 2005. In addition to developing the policies, protocols, associated technology and data systems, and staffing patterns required to carry out new responsibilities, the Program provided specialized training on those new responsibilities to nearly 800 staff members nationwide.

In the past four years, the Program has launched significant enforcement efforts to combat fraud and abuse in the bankruptcy system. The cornerstone of this effort is the national Civil Enforcement Initiative, launched in FY 2001, designed to root out debtor fraud and abuse and to protect consumers against those who prey upon individuals in financial distress. The Program's Criminal Enforcement Unit, established in FY 2003, has significantly strengthened our ability to detect, refer, and assist in the prosecution of criminal violations. Meanwhile, the Program continues to exercise our oversight role in Chapter 11 business reorganization cases and to appoint and supervise the private trustees who administer cases under Chapters 7, 12, and 13.

In the midst of these substantive activities, the Program also made great progress in programmatic and management areas in FY 2005. The Program issued its new Strategic Plan for 2005 through 2010, and we received the highest possible rating when reviewed by the Office of Management Budget using the Performance Assessment Rating Tool (PART). Program staff also responded with courage and professionalism to the enormous challenges

resulting from Hurricane Katrina, which temporarily shut down the Program's business operations and uprooted the personal lives of employees in the Gulf Coast areas of Louisiana and Mississippi.

The many new responsibilities given to the Program under the BAPCPA demonstrate the great confidence placed in us by Congress and the bankruptcy community. Thanks to the superlative efforts of Program employees and the invaluable support of the Attorney General and the Department, I believe the Program is well prepared to carry out our new tasks. The Program made great progress in accomplishing our goals in FY 2005. These efforts will provide a springboard as we launch future initiatives to implement and enforce bankruptcy reform in order to achieve a balanced, fair, and effective bankruptcy system..

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



In Memoriam

The U.S. Trustee Program mourned the loss of six dedicated employees in recent months. We are grateful to these employees not only for their years of public service, but also for the friendship and camaraderie they shared with their colleagues in the Program.

Linda F. Bailey
Trial Attorney, Los Angeles
April 27, 1954 – May 25, 2006

Linda F. Bailey joined the Program's Los Angeles office in 1989 and served as a Trial Attorney until her death. During her career with the Program, she received many achievement awards, including the Director's Award for Achievement in Diversity. Throughout her life, Ms. Bailey was committed to providing consumer education and helping consumers protect themselves from harmful conduct such as identity theft and mortgage foreclosure fraud. Ms. Bailey's initiative in launching new projects, dedication to protecting the rights of others, and enthusiasm for community service enriched the Program and the wider community.

Shauna D. Forsberg
Legal Clerk, Salt Lake City
May 19, 1953 – July 30, 2006

Shauna D. Forsberg worked as a legal clerk in the Salt Lake City office for 18 years. She played a critical role in making the office run smoothly by handling administrative duties that ranged from ordering office supplies to obtaining translation services to assist debtors. Mrs. Forsberg was always willing to lend a helping hand in support of the Program's goals. She will be remembered as one who treated everyone she met with respect and kindness, and who set the standard for customer service in the office.

Richard H. Jenkins
Regional Assistant United States Trustee, San Francisco
March 5, 1939 – January 29, 2006

Richard H. Jenkins joined the United States Trustee Program in 1992 as the Assistant United States Trustee in Oakland, after serving in the United States Navy Judge Advocate General Corps, in the Justice Department's Land and Natural Resources Division, and for 20 years in the office of the United States Attorney for the Eastern District of California. Mr. Jenkins then became the Regional Assistant United States Trustee in the San Francisco office, providing oversight for administrative and legal issues arising in northern and eastern California and Nevada (Region 17). Mr. Jenkins proudly served his country as an attorney for over 40 years. He loved his work, and was respected and revered by his friends and coworkers for his fair-mindedness and unwavering dedication to justice.

Mary E. May
United States Trustee, Region 20
March 8, 1950 – March 25, 2006

Mary E. May served as United States Trustee for Kansas, Oklahoma, and New Mexico (Region 20) from September 2002 until her death. Among her many notable achievements as United States Trustee were her significant contributions to the effective implementation of the new bankruptcy reform law, her revitalization of the criminal fraud prosecution program in her region, and her tireless efforts to promote the administration of small-asset Chapter 7 cases. Before joining the Program, Mrs. May was a partner with a bankruptcy law firm and served as a Chapter 7 panel trustee. She distinguished herself as a United States Trustee by her exemplary work, good humor, and friendship to all in the Program.

Richard W. Simmons
United States Trustee, Region 7
October 6, 1949 – July 7, 2006

Richard W. Simmons was first appointed United States Trustee for southern and western Texas (Region 7) in 1994, and he served the Program with distinction for the following 12 years. Mr. Simmons' accomplishments as U.S. Trustee include spearheading the Program's training efforts for a number of years, helping to craft a national initiative to enhance the Chapter 7 case closing process, and strengthening the case reporting requirements for Chapter 13 trustees. Mr. Simmons was highly regarded in the legal community and was dedicated to educating the public on bankruptcy law issues. He was known for his kind and generous nature, and his passing is a loss to all his colleagues in the Program.

Mary E. Tom
Assistant United States Trustee, New York
October 5, 1960 – July 7, 2006

Mary E. Tom was the Assistant United States Trustee for the Program's New York office from December 1993 until her death. Ms. Tom served from October 1995 to June 1997 as Acting United States Trustee for Region 2, supervising the administration of bankruptcy cases in New York, Connecticut, and Vermont. Ms. Tom was a stalwart of the Program who managed the oversight of some of the largest public company bankruptcies ever filed. In 1997, she received the prestigious Attorney General's Distinguished Service Award. All who had the opportunity to work with Ms. Tom marveled at her prodigious work ethic, legal acumen, and attention to detail.



Chapter 1

Mission, Organization, and Administration

Mission and Objectives

The United States Trustee Program promotes the integrity and efficiency of the bankruptcy system by enforcing bankruptcy laws, providing oversight of private trustees, and maintaining operational excellence.

The Program carries out many administrative, regulatory, and litigation responsibilities under the Bankruptcy Code and the Judicial Code (Titles 11 and 28 of the United States Code), as well as engaging in significant enforcement efforts to combat fraud and abuse in the bankruptcy system.

The Program implements Objective 2.6 of the Department of Justice's Strategic Plan for Fiscal Years 2003-2008, which is to "[p]rotect the integrity and ensure the effective operation of the Nation's bankruptcy system." The Department's Strategic Plan provides these 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.

Highest Caseload, Hurricane Response

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 2005, the Program engaged in oversight of the highest number of bankruptcy cases ever filed in a fiscal

year. The caseload increase was fueled at least in part by consumers who sought to file bankruptcy before the general effective date of new Bankruptcy Code provisions included in the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA"). That legislation was enacted on April 20, 2005, with a general effective date of October 17, 2005.

During FY 2005, individuals and businesses filed 1,782,643 bankruptcy cases in 88 judicial districts in 48 states, the District of Columbia, and four territories. (By law, the Program does not have jurisdiction in Alabama and North Carolina.) While business bankruptcy cases fell by 2 percent from FY 2004, non-business bankruptcy cases rose 10 percent in FY 2005 to the highest level ever recorded-1,748,421. In addition, at 542,002, filing numbers for the last quarter of FY 2005 were the highest ever measured for any quarter.

Chapter 7 liquidations accounted for more than 75 percent of the filings, or 1,346,201 cases. Approximately 24 percent of the cases-429,316-were filed as Chapter 13 repayment plans, and less than one percent-6,637-were Chapter 11 reorganizations. The remaining cases were Chapter 9 filings by municipalities, Chapter 12 family farmer bankruptcies, or cases ancillary to a foreign proceeding.

The Program also faced unique challenges through the end of FY 2005 arising from Hurricane Katrina, which struck the Gulf Coast area on August 29, 2005, and caused the evacuation of New Orleans, much of southern Louisiana, and the coastal areas of Mississippi. Lives were lost, buildings were destroyed, electricity and safe water were unavailable, and roads were impassable. At least three Program employees in New Orleans lost their homes, and others suffered substantial damage to their property.

Program staff in New Orleans received the immediate support of the Executive Office for U.S. Trustees. The New Orleans office was closed and staff members were relocated to the Program's offices in Houston, Jackson, Atlanta, and the District of Columbia, or to temporary space rented in Baton Rouge, La., where the Bankruptcy Court for the Eastern District of Louisiana also opened temporary space. The Program's New Orleans caseload was handled in Baton Rouge by staff who temporarily



Debbie Catapano, Roberta DeAngelis, Mark Redmiles, Cliff White, Steven Dillingham, EOUST

relocated to Baton Rouge and staff who traveled from Houston. Administrative hearings for cases filed in New Orleans were rescheduled and held in Baton Rouge.

Internet, email, and network access were restored within two weeks after the hurricane for employees in the Program's Shreveport and Jackson offices, allowing them



*Adaline Patterson,
New Orleans*

to file court documents electronically, view court dockets, and view pleadings filed by parties. Administrative hearing rooms in Mississippi's Gulf Coast area were not usable, and proceedings were moved to Hattiesburg, Miss.

Throughout this period, Program employees suffered no disruptions in pay or benefits despite the flooding of the National Finance Center, which is also located in New Orleans.

Organization, Budget, and Appropriations

To carry out its responsibilities, the Program is structured with an Executive Office in Washington, D.C.; United States Trustees in 21 regions with geographic jurisdictions determined by statute; and 95 field offices covering more than 150 court sites and about 280 administrative meeting locations. At the conclusion of FY 2005, the Program employed approximately 1,150 staff consisting of attorneys, financial analysts, and support staff. More than



*U.S. Trustees and Senior
Staff at Executive Office
for U.S. Trustees*

92 percent of the Program's employees are located in the field.

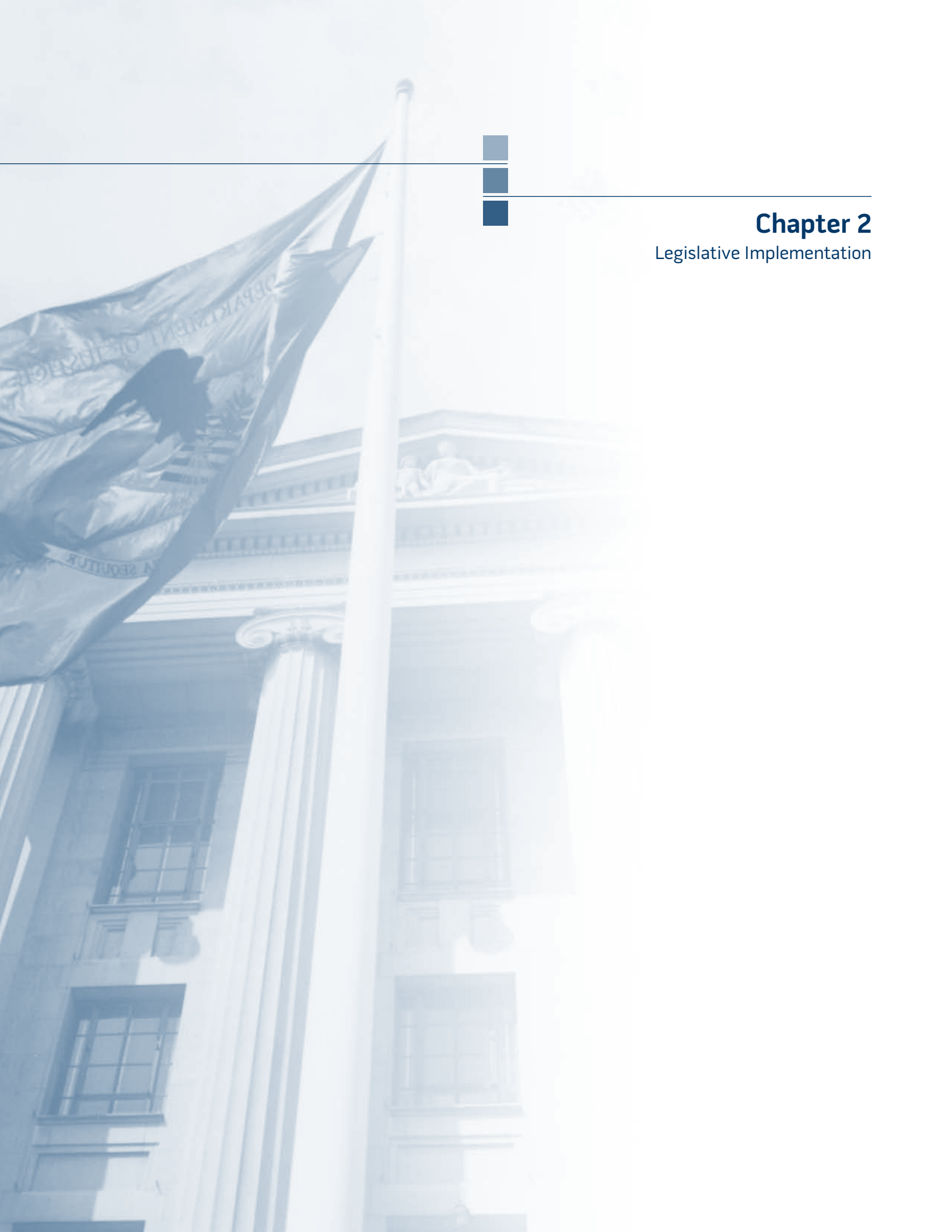
The Program is entirely self-funded through user fees paid by bankruptcy debtors. All revenues are deposited into the United States Trustee System Fund. The Program may expend funds as appropriated by Congress. Historically, 60

percent of the Program's funding is derived from quarterly fees paid in Chapter 11 reorganization cases. The balance of the funds comes from filing fees paid in cases filed under Chapters 7, 11, 12, and 13, as well as interest earnings and other miscellaneous revenue. With changes to the filing fees enacted by the BAPCPA, as amended

by the FY 2005 Emergency Supplemental Appropriations Act enacted on May 11, 2005, the balance of revenue from quarterly fees and filing fees will change somewhat.

The Program's appropriation for FY 2005 totaled \$173,602,000 with 1,198 authorized positions. Approximately 85 percent of the budget was needed to cover costs relating to personnel and facilities, including rent for offices and for nearly 450 meeting rooms where the first meetings of the debtors and creditors are held as required by law.

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 2

Legislative Implementation

Bankruptcy Reform Legislation

The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA) opened a new era in the history of bankruptcy law and practice when it was passed by Congress and signed into law by President Bush on April 20, 2005. BAPCPA gives the U.S. Trustee Program new responsibilities in a number of areas, including:

- Implementing a “means test” to determine whether a debtor is eligible for Chapter 7 or must file under Chapter 13.
- Approving non-profit credit counseling agencies to provide the credit counseling an individual must receive before filing bankruptcy.
- Approving debtor education course providers to offer the financial education an individual must receive before discharging debts.
- Supervising random audits and targeted audits to determine whether a Chapter 7 debtor’s bankruptcy documents are accurate.
- Engaging in enhanced oversight in small business Chapter 11 reorganization cases.
- Conducting and preparing a variety of studies and reports.

The Program’s civil and criminal enforcement efforts have strengthened the integrity of the bankruptcy system by providing consumer protection and combating fraud and abuse. The additional tools provided under the BAPCPA give the Program further opportunities to improve the bankruptcy system.

Working Groups

Immediately after the legislation was enacted, the Program began implementation efforts in preparation for assuming its new responsibilities on October 17, 2005, when most provisions of the BAPCPA took effect. To assist with this process, the Program established working groups of employees from the Executive Office, regional offices, and field offices. The primary substantive working groups covered the following topics:

- Implementation Plan Review Group, to oversee implementation of all new responsibilities.
- Means Testing.
- Credit Counseling and Debtor Education.
- Debtor Audits.
- Small Business Chapter 11 Cases.
- Reports, Data, and Automation.

The Program also worked closely with the federal courts to develop new Rules of Bankruptcy Procedure and Official Forms made necessary by the BAPCPA’s enactment. Program senior staff participated in meetings of the United States Judicial Conference’s Advisory Committee on Bankruptcy Rules (Bankruptcy Rules Committee), and in meetings of subcommittees that developed an official form for the means testing calculation as well as procedural rules governing consumer, business, and health care issues.

Means Testing

Under the BAPCPA, all individual debtors who file Chapter 7 bankruptcy on or after October 17, 2005, undergo a form of “means test” to determine if they are eligible for Chapter 7 relief. If the means test indicates that the Chapter 7 case is presumed to be an abuse, the U.S. Trustee must either file a motion asking the bankruptcy court to dismiss the case or file a statement explaining why seeking case dismissal is not appropriate. In addition, any other interested party, such as the Chapter 7 trustee or a creditor, may file a motion to dismiss if the case is presumed to be an abuse.

The means test has essentially two steps. First, the debtor’s current monthly income is compared with the median family income applicable to the debtor. (“Current monthly income” and “median family income” are explained below.) If the debtor’s current monthly income is equal to or less than the applicable median family income, the debtor need not complete the second step of the means test.

If, however, the debtor’s current monthly income is more than the applicable median family income, a second step of the means test is performed to determine if the Chapter 7 case is presumed to be an abuse. Under this

second step, the debtor's allowable expenses are subtracted from the debtor's current monthly income, resulting in the debtor's net monthly income. ("Allowable expenses" are explained below.) With certain exceptions based on the amount of unsecured debt, the Chapter 7 case may be presumed to be an abuse if the debtor's net monthly income is \$100 or more. This presumption may be rebutted if the debtor shows special circumstances that justify additional expenses or adjustments of income.

All debtors, regardless of income level, may have their Chapter 7 case dismissed if the filing was in bad faith or would be an abuse based upon the totality of the circumstances. However, if the debtor's income level is below the applicable median income, only the U.S. Trustee or the bankruptcy court may seek case dismissal on this basis.

The BAPCPA defines these terms for the purposes of means testing. "Current monthly income" is the average monthly income from all sources, with limited exceptions,



Mark Redmiles,
Donald Walton, Roberta
DeAngelis, Monique
Bourque, EOUST

for the six months before filing bankruptcy. "Median family income" is based on tables published by the U.S. Bureau of the Census. The applicable median family income figure takes into account the state or territory and the number of people in the debtor's family. "Allowable expenses" are the total of these costs: monthly

expense amounts specified in the National and Local Standards for Allowable Living Expenses issued by the Internal Revenue Service; actual monthly expenses for categories specified by the Internal Revenue Service as "Other Necessary Expenses"; the average monthly payment on secured debts, plus payments toward amounts past-due on certain secured debts; expenses for payment of all priority debts, such as child support or taxes; and actual expenses in other expense categories specified in the statute.

To prepare for implementation of the means test, during FY 2005 the working group engaged in a wide variety of activities. The working group coordinated with the U.S. Census Bureau and the Internal Revenue Service to facilitate use of Census and IRS data for means testing, as required under the law. It participated in meetings with the Consumer and Forms Subcommittees of the Bankruptcy Rules Committee, to discuss new and amended Federal Rules of Bankruptcy Procedure and Official Forms

made necessary by the BAPCPA. The group drafted proposed means testing forms and instructions for completing the forms. It coordinated with the Program's Information Technology unit regarding means testing automated resources and tools, and consulted with the Administrative Office of the U.S. Courts regarding virtual text entry language to be used in certain submissions relating to means testing. Group members prepared training and informational materials for Program managers, attorneys, analysts, and paralegals, and presented those materials at 13 training sessions held in 10 cities over three months.

Credit Counseling and Debtor Education

The BAPCPA requires all individual debtors filing bankruptcy on or after October 17, 2005, to undergo credit counseling before they file and to complete an instructional course in personal financial management (debtor education) after they file. An individual is not eligible to file bankruptcy without undergoing credit counseling, and is not eligible to receive a discharge without completing a debtor education course. There are limited exceptions to these requirements.

New Section 111 of the Bankruptcy Code directs the U.S. Trustee to approve pre-bankruptcy credit counseling agencies and pre-discharge debtor education course providers. (In North Carolina and Alabama, where the U.S. Trustee Program does not operate, court officials called Bankruptcy Administrators approve pre-bankruptcy credit counseling agencies and pre-discharge debtor education course providers.) Section 111 also directs the clerk of the bankruptcy court to maintain a publicly available list of U.S. Trustee-approved credit counselors and debtor education course providers.

Section 111 sets standards for U.S. Trustee approval of credit counselors and debtor education course providers. Standards for credit counselors include, but are not limited to: employing qualified counselors; maintaining adequate provisions for safekeeping and payment of client funds; providing adequate counseling services; and dealing responsibly and effectively with other matters relating to quality, effectiveness, and financial security. Standards for debtor education course providers include, but are not limited to: having trained personnel with adequate experience in education, learning materials, and teaching methods; having adequate facilities; and maintaining reasonable records to permit the Program to evaluate the course.

Initial U.S. Trustee approval of credit counselors and debtor education course providers is for a probationary

period of up to six months. Subsequent approvals are for one-year periods.

In the five months between April and September, the working group developed and placed into service a comprehensive application and approval procedure for pre-bankruptcy credit counseling agencies and pre-discharge debtor education providers. The working group coordinated implementation of the new counseling and education requirements with various federal and state regulatory agencies; developed an application form and application instructions to implement the new statutory criteria for approved credit counseling agencies and debtor education providers; established a procedure for reviewing applications submitted; and began approving credit counseling agencies and debtor education providers. The group worked with the Program's information technology unit to create a new database to track applications and a Web-based certificate delivery system. It provided training to Program staff on the new credit counseling and debtor education requirements. In addition, working group members shared information with the Administrative Office of the U.S. Courts regarding the Bankruptcy Administrators' approval and bonding of credit counseling agencies and approval of debtor education course providers in Alabama and North Carolina.

Debtor Audits

Under the BAPCPA, all consumer debtors filing bankruptcy on or after October 20, 2006, may have their bankruptcy documents audited to determine the accuracy, veracity, and completeness of those documents. There are two types of audits—random and targeted.

The BAPCPA directs the Attorney General to develop procedures for these audits. The auditors will review documents provided by the debtor and will adhere to generally accepted auditing standards or alternative standards developed by the Program. For the random audits, the Program will randomly select at least one of every 250 cases. For the targeted audits, the Program will select a sample of cases in which income and expenses are greater than average for a district.

Documents subject to audit include the petition, schedules, statement of financial affairs, list of creditors, and Chapter 13 plan. The debtor must cooperate with the auditors. Failure to provide necessary papers or property that is requested for an audit is, if not satisfactorily explained, grounds to revoke a debtor's discharge.

The Program will contract with and supervise third party auditors to conduct the random and targeted audits.

The report of the auditor will specify material misstatements of income, expenditures, or assets. In each audited case, the audit report will be filed with the court and sent to the U.S. Trustee. If the auditor reports material misstatements,

the bankruptcy clerk must notify all creditors that the report has been filed. In addition, the U.S. Trustee must take appropriate action upon

issuance of a report finding material misstatements. If the debtor does not satisfactorily explain material misstatements, the U.S. Trustee's action may include filing a complaint to revoke the debtor's discharge and/or referring the matter to the U.S. Attorney for possible criminal prosecution.

The Program will develop an audit tracking system to identify the cases selected for audit and to report audit results. Public information will be provided by the Program at least once a year regarding aggregate audit results.

During FY 2005, the working group began to formulate plans for implementing the audit requirements. It also began developing a framework for meeting information technology and contracting needs required by the new legislation. Because the audit requirements do not take effect until October 2006, planning continued into FY 2006.

Small Business Chapter 11 Cases

Effective October 17, 2005, the BAPCPA sets forth new duties for small business Chapter 11 debtors and for U.S. Trustees who supervise small business Chapter 11 cases. Some of these duties reflect practices engaged in by the Program prior to the new law, pursuant to the Program's authority to supervise case administration.

The BAPCPA defines "small business debtor" as a debtor and any debtor affiliates that have in the aggregate no more than \$2 million of non-contingent, liquidated secured and unsecured debt, and that are not in the business of owning or operating real property. If the U.S. Trustee appoints an unsecured creditors' committee, however, such a debtor is not defined as a small business debtor unless the creditors' committee provides ineffective oversight.



Credit Counseling and Debtor Education Interim Staff: Glenn Otto, Susan Balderson, Todd Wright, Richard Spangler, Mark Neal, Martha Confer, Cindy Burnette, Suzanne Verhaal, Maria Catapano, Roy Hilmer, Sherrie Schlosser, Mary Kay Baltzell, Brad Perdue, Mary Ellen Montanez, Janneane Cruse, Ed Walsh, John Fitzgerald

The small business debtor's obligations include: filing the most recent balance sheet, statement of operations, cash-flow statement, and federal income tax return at the time the petition is filed; if those documents are not



Credit Counseling
and Debtor Education
Staff Training

available, filing a statement under penalty of perjury that the documents do not exist; filing schedules and the statement of financial affairs within 30 days after the petition date; participating in an initial debtor interview conducted by the U.S. Trustee; appearing at the Section 341 meeting unless the court finds

extraordinary and compelling circumstances to permit waiver of appearance; appearing at meetings scheduled by the U.S. Trustee or the court; filing required post-petition reports; maintaining customary insurance; and timely filing tax returns and paying taxes. In addition, with limited exceptions, the small business debtor must file its reorganization plan and disclosure statement within 300 days of the petition date and obtain confirmation of the plan within 45 days thereafter.

In a small business case, the U.S. Trustee must conduct an initial debtor interview at which, among other things, an inquiry is made into the debtor's viability and business plan and financial reporting requirements are explained to the debtor. In addition, the U.S. Trustee must review and monitor the debtor's progress toward confirmation. The U.S. Trustee may conduct on-site visits with reasonable written notice to the debtor. Many of these activities have been common practice under the Program's general authority to supervise case administration.

Coordinating with the Bankruptcy Rules Committee, in FY 2005 the working group helped to devise a pilot version of the small business Chapter 11 monthly operating report and a form disclosure statement and plan for small businesses. The working group also developed guidance for Program staff implementing the new small business Chapter 11 requirements.

Reports, Data, and Automation

The BAPCPA requires changes in the reports, data, and automation systems of the Program. Several major reports and studies are required to be conducted by or involve the Program. These include:

- A report and study regarding the utilization of Internal Revenue Service expense standards in means testing.
- A report and study addressing the effectiveness of a financial management training curriculum and materials the Program is to develop, plus other financial management training courses currently available; a pilot study of the Program's training curriculum in six judicial districts; and a sampling and assessment of financial education programs.
- A report and study on the new definitions of household goods and antiques for purposes of debtor lien avoidance actions, and their use and impact upon debtors and bankruptcy courts.
- A report and study by the Small Business Administration, in consultation with the Program and the Administrative Office of the U.S. Courts, evaluating bankruptcy laws and their impact upon small businesses in Chapter 11.
- Public information, to be provided at least annually, on the aggregate results of debtor audits, including the percentage of cases, by district, in which a material misstatement of income or expenditures is reported.

The BAPCPA also requires the collection of new types of data to implement its provisions. For example, new databases are required to implement means testing, maintain lists of approved credit counseling entities, track debtor audit results, and meet case processing requirements and deadlines. In addition, existing databases for reporting civil enforcement actions and recording professional staff activities require modification to accommodate changes made by the BAPCPA.

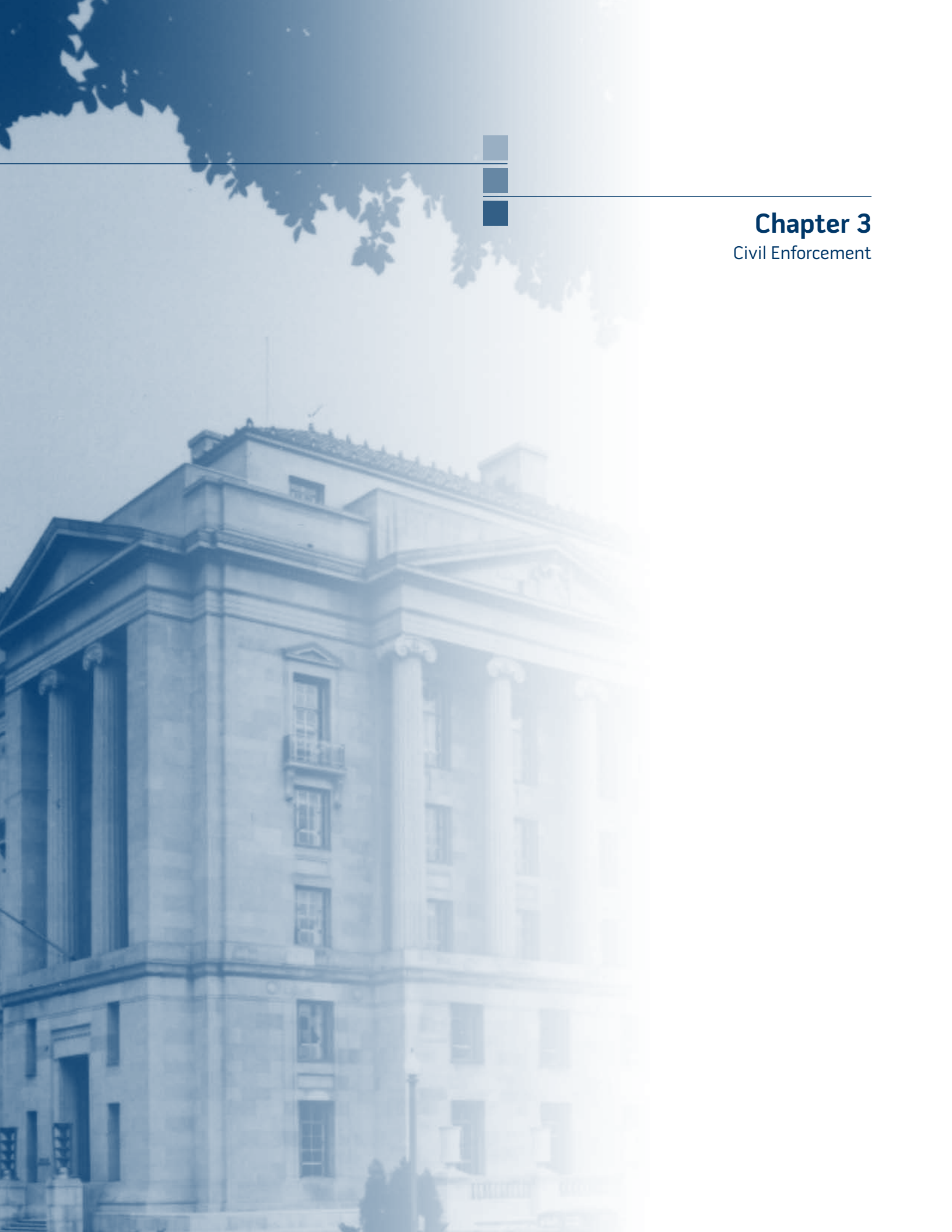
The working group, in conjunction with the Program's Information Technology Unit and the Program's Data Integrity Group, identified the data elements to add or revise in existing databases and outlined the steps needed for the required studies and reports. The working group helped coordinate the preparation of upgrades to existing databases, define the new data elements, and train Program personnel on the database changes resulting from the BAPCPA requirements. The working group

also helped plan for implementation of the new reporting requirements, which require data collection and contractor involvement.

For more on information technology activities relating to the BAPCPA, see Chapter 8.

Other Working Groups

The Program also established legislative implementation working groups on costs and staffing, and on training and public presentations. More information on administrative matters and training activities during FY 2005 is found in Chapters 1 and 9.



Chapter 3

Civil Enforcement

Combating Fraud and Abuse

Combating fraud and abuse in the bankruptcy system continued to be a key priority of the Program in FY 2005. The cornerstone of this effort is the National Civil Enforcement Initiative, which takes a two-pronged approach: to root out and remedy debtor fraud and abuse by taking such actions as seeking denial of discharge or dismissal of a case, and to provide consumer protection by seeking the disgorgement of fees, fines, or other remedies against attorneys, bankruptcy petition preparers, creditors, and others who prey upon those in financial distress.

Preparing for the BAPCPA's successful implementation was one of the highest civil enforcement priorities in FY 2005. The BAPCPA provided the Program with new civil enforcement tools, such as means testing and debtor audits, to enhance the integrity and efficiency of the bankruptcy system for the benefit of all parties and in the public interest. The legislative implementation working group on means testing worked closely with the Bankruptcy Rules Committee to develop the official forms and interim rules necessary to implement the means testing provisions. It also worked closely with other governmental entities designated as sources of means testing information under the BAPCPA, including the Census Bureau and the Internal Revenue Service. (For more information on the legislative implementation working groups, see Chapter 2.)

The Program continued to institute and refine systems for monitoring the results of its work in FY 2005, taking more than 50,700 civil enforcement and other actions that yielded over \$593 million in debts not discharged, penalties, and other monetary remedies. The number of enforcement actions and their dollar outcomes have grown impressively since the Program began to track its efforts in FY 2001. In addition, through training and refined guidance the Program focused on the strategic selection of cases to achieve the maximum deterrent effect. As a result, during FY 2005 the Program continued to file more complex adversary actions with the goal of producing the greatest benefit to the bankruptcy system.

Civil Enforcement Actions

The Program pursues civil enforcement 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.

Denial or Revocation of Discharge

A bankruptcy discharge releases the debtor from personal liability for payment of certain debts and prevents creditors from taking action to collect those debts. Chapter 7 gives a fresh start to the 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 financial affairs; destroying property to hinder or defraud a creditor or trustee; knowingly making a false oath; or refusing to obey a court order. A previously granted discharge may be revoked as a result of information discovered after the discharge was entered. Actions to deny or revoke discharge provide a strong remedy against debtors who attempt to undermine the integrity of the bankruptcy system.

During FY 2005, U.S. Trustees filed 1,301 complaints objecting to the entry or seeking revocation of the debtor's discharge under Section 727. Of the 1,112 complaints that were resolved by judicial decision or by debtor consent during FY 2005, the discharge was denied, waived, or revoked in 1,104 cases, or 99.3 percent of the cases. In total, U.S. Trustees initiated 3,947 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.

U.S. Trustee activity under Section 727 prevented 1,753 debtors from discharging more than \$219 million in general unsecured debt in FY 2005 as a result of formal complaints or investigations that resulted in waiver of discharge, dismissal, or conversion to Chapter 13.

Cases involving denial or revocation of discharge in FY 2005 included the following:

- Ruling for the Rochester office, the Bankruptcy Court for the Western District of New York prevented Chapter 7 discharge of more than \$1



Mark Redmiles, Chief of Civil Enforcement

million in unsecured debt by denying the debtor's discharge. The debtor resisted the U.S. Trustee's discovery requests, arguing the U.S. Trustee could not investigate her case as a substantial abuse because she listed her debts as business

debts, although she did not own an interest in any business. The debtor refused to turn over documents or appear at two scheduled Bankruptcy Rule 2004 examinations, although she did ultimately attend an examination.

- The Bankruptcy Court for the District of Rhode Island approved a consent order in which an accountant consented to denial of his Chapter 7 discharge. The accountant initially filed under Chapter 11 to thwart actions in three federal receiverships involving his failed financial institutions. More than 200 creditors filed over \$11 million in claims in the Chapter 11 case. An investigation by the Providence office revealed the accountant transferred and concealed real estate worth over \$1.3 million with intent to hinder, delay, or defraud creditors. The U.S. Trustee obtained the appointment of a Chapter 11 trustee and the case was later converted to Chapter 7.
- The Bankruptcy Court for the District of Oregon revoked the discharge of a debtor who tried to discharge \$1,931,157 in unsecured debt.

Discovery initiated by the Portland, Oregon, office suggested the debtor transferred to his girlfriend more than \$400,000 from a company he controlled, and concealed the transfer. He also allegedly made false statements and false oaths in his bankruptcy case. The debtor agreed to revocation of discharge shortly before the U.S. Trustee was scheduled to conduct six depositions relating to his case. The U.S. Trustee also made a criminal referral that resulted in a guilty plea to bankruptcy fraud and a sentence of 21 months in prison, three years supervised release, and \$71,000 in restitution payable to the Chapter 7 trustee.

- The Bankruptcy Court for the Northern District of Illinois approved a debtor's waiver of discharge obtained by the Chicago office after a series of Section 341 meetings and Bankruptcy Rule 2004 examinations. The debtor listed unsecured claims of \$738,000 owed to around 20 individuals, but actual losses were believed to exceed \$2 million to a greater number of claimants. From 1978 through 2001, the debtor operated a company that received funds purportedly for investment purposes from hundreds, or thousands, of Italian-American investors. The debtor's office, which appeared to be a small bank, provided investors with passbooks and promissory notes virtually identical to those issued by savings and loan institutions and banks, and made periodic repayments of interest and principal to the investors. During Section 341 examinations the debtor admitted that the company operated as a Ponzi scheme, using funds from new investors to pay interest and principal to earlier investors. He also said he purported to give certain investors security interests in real estate located in Italy, but in his bankruptcy case he claimed no ownership in the property.

Dismissal for Cause or Substantial Abuse

Under the law in effect before October 17, 2005, a Chapter 7 consumer case could be dismissed under 11 U.S.C. § 707(a) for "cause" or 11 U.S.C. § 707(b) for "substantial abuse." Only the U.S. Trustee or the court could seek dismissal for substantial abuse.

In FY 2005, U.S. Trustees filed 4,245 motions to

dismiss for substantial abuse under Section 707(b). Of the 3,061 motions to dismiss that were resolved by judicial decision or by debtor consent during FY 2005, U.S. Trustees were successful in 2,950, or 96.4 percent, of the motions. In the aggregate, during FY 2005, U.S. Trustees initiated 26,679 informal inquiries and formal court actions pursuant to Section 707(b) for substantial abuse. U.S. Trustee activity under Section 707(b) prevented 7,705 debtors from the immediate discharge in Chapter 7 of more than \$283 million in general unsecured debt.

Similarly, in FY 2005, U.S. Trustees filed 3,570 motions to dismiss for cause under Section 707(a). Of the 2,659 motions to dismiss for cause that were resolved by judicial decision or by debtor consent during FY 2005, U.S. Trustees were successful in 2,595, or 97.6 percent of the motions. In the aggregate, during FY 2005, U.S. Trustees initiated 7,028 informal inquiries and formal court actions pursuant to Section 707(a) for cause. U.S. Trustee activity under Section 707(a) prevented 4,816 debtors from the immediate discharge in Chapter 7 of almost \$27.8 million in general unsecured debt.

Examples of Program actions seeking case dismissal in FY 2005 included the following:

- The Bankruptcy Court for the District of New Hampshire dismissed for cause the case of a debtor who sought to discharge more than \$1.8 million in gambling debts owed to 11 casinos. The Manchester office and the Chapter 7 trustee sought denial of discharge for failure to maintain records, among other grounds; alternatively, the U.S. Trustee sought case dismissal. On the eve of trial, the debtor consented to dismissal and agreed to reimburse the U.S. Trustee's litigation costs.
- The Bankruptcy Court for the Southern District of New York approved a debtor's stipulation agreeing to convert to Chapter 11 in lieu of having the New York office seek dismissal for substantial abuse. The debtor, a financial consultant who earned almost \$300,000 per year, listed \$470,735 in unsecured debt. Although his wife did not work, he listed these monthly expenses relating to his four-year-old son: \$1,650 for an apartment for an au pair, \$516 for the au pair, \$1,375 for a private French school, and \$560 for day care. Other monthly expenses included \$6,307 for apartment rent and utilities, \$3,600 for recreation, \$1,600 for clothing, \$1,121 for dry cleaning, \$650 for transportation, \$560 for maid service, and \$450 for telephone. The financial consultant also maintained a condominium in Marseille, France.
- Granting a motion filed by the Miami office, the Bankruptcy Court for the Southern District of Florida dismissed a physician's case for substantial abuse with prejudice against refiling for 12 months. The ruling prevented Chapter 7 discharge of \$211,337 in unsecured debt. The physician understated his monthly income and listed excessive monthly expenses, including a \$1,000 payment for a Cadillac Escalade automobile, \$650 for home maintenance, and \$350 for clothing for one person. The U.S. Trustee calculated that in a Chapter 13 plan the physician could repay approximately 38 percent to unsecured creditors in three years or 64 percent in five years.
- Ruling on a motion by the Los Angeles office, the Bankruptcy Court for the Central District of California prevented discharge of \$316,571 in debt on 79 credit cards by dismissing the debtor's case. The debtor, who lived with his parents, claimed no secured debt, no income, and no expenses. The U.S. Trustee sought dismissal for substantial abuse because the debtor incurred the credit card debt at a time when he made no more than \$8,000 a year. The debtor failed to appear at a hearing on the matter.
- A pharmacist consented to dismissal of his case in the Middle District of Florida, after the Orlando office filed a motion to dismiss. The debtor allegedly understated his income by almost \$2,000 per month, and could contribute additional disposable income to a Chapter 13 plan if he terminated monthly payments for a jet ski, boat upkeep, and cars for his adult children, as well as monthly contributions of \$887 to a 401(k) plan. The U.S. Trustee argued the debtor could repay 67 percent of his \$171,525 unsecured debt in three years in Chapter 13.

- A Chapter 7 debtor who tried to discharge \$163,200 in credit card debt converted his case to Chapter 13 after the Worcester office sought dismissal for substantial abuse. The debtor listed monthly expenses of \$700 for gifts, travel, vacation, field trips, hockey, and soccer; \$360 for cable/Internet service, haircuts, tutoring, and computer expenses; \$411 in retirement contributions; and \$250 for recreation. In addition, documents requested by the U.S. Trustee revealed the debtor consistently had taxes over-withheld from his paycheck, resulting in an average tax refund of \$9,800 in the three years before he filed bankruptcy.

Improper Conduct by Attorneys

Lawyers who engage in unethical conduct or provide substandard representation harm their clients and undermine the integrity of the bankruptcy system. The U.S. Trustee monitors attorney conduct and adherence to professional standards, and takes action against unlawful activity and inadequate representation by counsel. Civil enforcement actions by the U.S. Trustee include asking the court to bar an attorney from appearing in bankruptcy cases and coordinating with state bar associations or other regulatory bodies as they pursue attorney disciplinary proceedings. Enforcement actions also include requesting reduction or disgorgement of debtors' attorneys' fees under 11 U.S.C. § 329 and seeking sanctions or similar remedies.

During FY 2005, U.S. Trustees filed 418 motions seeking disgorgement of attorney fees under Section 329, in both consumer and business cases. Of the 336 motions resolved by judicial decision or consent during FY 2005, U.S. Trustees were successful in 308 motions against debtors' attorneys, or 91.7 percent of the motions resolved. During FY 2005, U.S. Trustees initiated 1,194 inquiries and formal actions against debtors' attorneys that resulted in the disgorgement of more than \$660,000 in attorney fees.

Program employees also filed 166 motions and complaints for sanctions against attorneys and initiated 326 informal inquiries. Of the 115 motions and complaints for sanctions against attorneys resolved during FY 2005, U.S. Trustees were successful in 105, or 91.3 percent of the cases. Additionally, during FY 2005 U.S. Trustees made 40 disciplinary referrals to state bars, and 28 disciplinary rulings were issued.

The following are examples of Program enforcement actions against attorney misconduct in FY 2005:

- On motion of the Pittsburgh office, the Bankruptcy Court for the Western District of Pennsylvania barred an attorney from practice before the bankruptcy court after she misappropriated client funds. During a Chapter 13 proceeding, the attorney attended the closing of a sale of her clients' real property. A check for approximately \$104,000 was made payable to the Chapter 13 trustee to pay off a mortgage. The attorney deposited the check into her own account instead of delivering it to the trustee. The sale proceeds were used at least in part to pay the attorney's federal tax debt and to pay other clients from whom she misappropriated funds. The attorney subsequently consented to disbarment as a result of this and similar matters.

- The Bankruptcy Court for the District of New Jersey recommended a one-year suspension from bankruptcy practice for a debtors' attorney who was previously enjoined from forging clients' signatures on their petitions. Despite the injunction, the attorney had filed serial Chapter 13 petitions without clients' knowledge or signatures, and failed to disclose the clients' prior filings. Upon a motion for sanctions filed by the Newark office pursuant to Bankruptcy Rule 9011 and 11 U.S.C. § 105, and testimony offered at trial, the court agreed with the U.S. Trustee that monetary sanctions would be pointless since the prior sanction did not deter the attorney. The attorney was suspended from the practice of law by the Supreme Court of New Jersey as a result of his actions, and was eventually disbarred for failure to answer the suspension action.

- An attorney's egregious conduct resulted in the revocation of his right to practice before the Bankruptcy Court for the Central District of California, subject to the opportunity to apply for reinstatement. The attorney's conduct included seeking dismissal of the wrong bankruptcy case, which resulted in the foreclosure of property of a debtor who was not the attorney's client. In another case, the attorney failed to defend a motion for relief from stay that was based upon non-payment on a mortgage, where the payments actually had been submitted to the

attorney to remit. The attorney then attempted to have the property deeded to a third party to delay the foreclosure. The Riverside office prosecuted the disciplinary matter, and the Chapter 13 trustee and her staff attorney were among those offering testimony.

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.

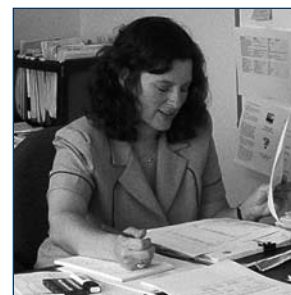
Nonetheless, some petition preparers charge exorbitant rates, fail to make necessary disclosures, and engage in other prohibited conduct including schemes to defraud consumers who seek home financing or face foreclosure or eviction. To curb such conduct, U.S. Trustees bring civil actions to obtain orders to disgorge document preparation fees, impose fines, and enjoin prohibited conduct by petition preparers.

In FY 2005, U.S. Trustees filed 546 motions and/or complaints seeking relief against petition preparers under Section 110. Of the 590 matters resolved by judicial decision or consent during FY 2005, U.S. Trustees were successful in 578 actions against petition preparers, or 98 percent of the matters resolved. During FY 2005, U.S. Trustees pursued petition preparers through informal inquiries and formal court actions in 1,553 cases. U.S. Trustee activity under Section 110 resulted in the imposition of fines and the recovery of fees in excess of \$2.3 million, and the issuance of 199 injunctions.

The Program's enforcement actions against bankruptcy petition preparers in FY 2005 included the following:

- The Bankruptcy Court for the Western District of Tennessee entered a nationwide permanent injunction and consensual monetary judgment against a bankruptcy petition preparer and "mortgage consultant," based on a complaint by the Memphis office. The petition preparer advised mortgagors to file bankruptcy to increase their likelihood of obtaining financing. He provided

and prepared the bankruptcy papers, advising the debtors not to identify him in connection with the filing. The U.S. Trustee alleged causes of action for violations of Section 110 and the unauthorized practice of law, and sought a contempt order, sanctions, turnover of fees and court costs, injunctive relief, and an accounting. Rather than face trial, the individual agreed to cease petition preparation, disgorge all associated fees, and pay filing fees and associated costs in cases in which he advised debtors to file bankruptcy.



Lynn Kohen, Greenbelt

- The Bankruptcy Court for the Southern District of Ohio fined a bankruptcy petition preparer and his company \$546,000, ordered fee disgorgements of \$40,932, and permanently enjoined the two from preparing petitions, based on their non-compliance with Section 110. The court jointly considered 21 adversary proceedings filed by the Columbus office against the individual and the entity.
- The District Court for the Southern District of Texas found a bankruptcy petition preparer in contempt of court and assessed a \$3,000 sanction against her for impersonating an attorney in a Chapter 11 case. The court also permanently enjoined the preparer from engaging in the unauthorized practice of law and other specified conduct. The petition preparer appropriated the attorney's state bar number and represented the Chapter 11 debtor, holding herself out to the debtor and the court as a licensed attorney. The Houston office discovered the impersonation, took action leading to the issuance of a warrant for the preparer's arrest, and filed the action under Section 110.
- Ruling for the San Diego office, the Bankruptcy Court for the Southern District of California permanently enjoined an individual from acting

as a bankruptcy petition preparer and directed him to pay \$2,000 in fines and disgorge \$2,000 in fees received in two separate cases. The preparer offered his services primarily to the Latino community, using Spanish-language advertising to falsely represent himself as a lawyer and charging excessive fees based upon the amount of debt the debtor sought to discharge.

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

Serial filers may remain in bankruptcy just long enough to obtain the automatic stay's temporary protection from collection activity by creditors. Often, they do not comply with Bankruptcy Code requirements such as filing schedules and appearing at the Section 341 meeting. The Bankruptcy Code prohibits a debtor from refiling for bank-



Lisa Tracy, EOUST

ruptcy 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. Many courts will order a longer ban on refiling 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 the prohibition on immediate refiling. The Program requires all debtors to produce documents at the Section 341 meeting in an effort to confirm their names and Social Security numbers. The Program also monitors its own databases and court records for evidence of abusive refiling, and seeks dismissal or denial of discharge in such cases.

In FY 2005, U.S. Trustees identified 4,598 problems

with debtor identification. U.S. Trustees brought formal actions, including motions to dismiss, objections to discharge, objections to plan confirmation, and other actions, in 203 cases. Debtors filed amended bankruptcy documents in 4,549 cases after informal inquiry or formal action by U.S. Trustees. Of the 87 formal actions resolved by judicial decision or consent during FY 2005, U.S. Trustees were successful in 85 actions, or 97.7 percent of the actions.

Examples of cases involving serial filing and/or bankruptcy-related identity fraud in FY 2005 included the following:

- Ruling for the Santa Ana office, the Bankruptcy Court for the Central District of California approved a stipulated order sanctioning a debtor \$10,000, dismissing his bankruptcy case with prejudice, and barring him from refiling for three years without prior court approval. Within 20 months, the debtor filed 17 fraudulent Chapter 13 bankruptcy petitions using variations of his name and the names of relatives, to prevent foreclosures and/or eviction proceedings on various properties.
- The Bankruptcy Court for the Eastern District of California dismissed a corporation's Chapter 11 case with a six-year bar against any bankruptcy filing by the corporate president or any entity under his control. The dismissal was ordered based on a stipulation entered by the official and the Fresno office, detailing the 22 bankruptcy cases the official filed under 11 names in 16 years. The order provided for the assessment of \$10,000 in sanctions against the official if he violates the six-year bar on refiling.
- A debtor was sanctioned \$9,000 by the Bankruptcy Court for the Northern District of Texas after an investigation by the Dallas office and the Chapter 13 trustee. The debtor filed bankruptcy at least 12 times since 1991, using three Social Security numbers. He made no plan payments and all cases were dismissed. The debtor also filed two corporate cases that he never pursued, and acted as a bankruptcy petition preparer in two other cases.

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 as asserted in their proof of claim; seeking to avoid creditors' liens; bringing actions for creditors' failure to timely release liens; addressing violations of the automatic stay; challenging improper reaffirmation agreements; pursuing violations of consumer protection laws; and challenging the unauthorized use of official court language in solicitations to consumer debtors.

- The Program's National Civil Enforcement Coordinator demanded that a law firm cease filing claims, in multiple jurisdictions, on behalf of a creditor where documentation showed no basis for the claims against a debtor. U.S. Trustees in three regions reported the pattern of abuse. The law firm acknowledged that erroneous claims were filed in numerous cases, purportedly due to a computer problem. The claims were withdrawn and the creditor modified its business practices to require individual review of each proof of claim prior to filing.
- Ruling for the Manhattan office, the Bankruptcy Court for the Southern District of New York denied a consumer goods manufacturer's request to approve a reaffirmation agreement completed by a debtor who filed without assistance from an attorney. Under a reaffirmation agreement, a debtor may continue paying a debt that would otherwise be discharged, and may retain the property upon which the debt is owed. The Bankruptcy Code governs the language and procedures associated with such agreements. The court ruled that the manufacturer asserted no lien or security interest in any property of the debtor, so the debtor did not have to enter into a reaffirmation agreement to retain the goods purchased from the creditor. The U.S. Trustee noted that the court had denied approval of reaffirmation agreements filed by this creditor in at least five other recent Chapter 7 cases.

- The Savannah office issued a cease and desist letter to a mortgage lender that identified itself as a "Chapter 13 Administrator" and sent deceptive solicitation letters to Chapter 13 debtors. The letters mentioned a "special government program" by which a debtor could purchase or refinance a home at a small out-of-pocket cost. The U.S. Trustee stated that, by identifying itself as a Chapter 13 Administrator, the lender falsely suggested it was affiliated with a Chapter 13 trustee.



Henry Hobbs, Austin



Chapter 4

Criminal Enforcement

Fighting Bankruptcy Crimes

Criminal enforcement continued as a primary component of the Program's strategy to combat bankruptcy fraud and abuse in FY 2005. By statute, the U.S. Trustee must refer suspected criminal activity to the U.S. Attorneys' offices for prosecution. Program staff identify instances of suspected criminal behavior and assist U.S. Attorneys in prosecuting such cases. In FY 2005, the Program worked with various federal law enforcement agencies to pursue a wide range of bankruptcy crimes. A notable achievement was the multi-district coordination of "Operation SILVER SCREEN," a nationwide bankruptcy sweep against 21 defendants in 17 criminal cases.

To focus the Program's criminal enforcement efforts, two years earlier, in FY 2003, the Program established a Criminal Enforcement Unit (CrEU) consisting primarily of former federal prosecutors. The CrEU significantly strengthened the Program's ability to detect, refer, and assist in the prosecution of criminal violations. The CrEU has provided extensive training to Program staff, private trustees, and federal and local law enforcement personnel in courses at the National Advocacy Center, the Federal Law Enforcement Training Center, the Inspectors General Criminal Academy, and many offices of the Program and the U.S. Attorneys. During FY 2005, CrEU staff participated in over 50 programs, including training for special agents of the FBI and Internal Revenue Service; Inspectors General at the Department of Housing and Urban Development, Social Security Administration, and Environmental Protection Agency; the United States Postal Inspection Service; and Immigration and Customs Enforcement.

In FY 2005, the Program nationally implemented its automated Criminal Enforcement Tracking System to track the number of criminal referrals and analyze the types of referred violations. This system is designed to provide a more accurate measure of criminal enforcement actions, assist in trend identification, and permit management improvements through focused resource allocation.

The Program continued to participate in national and local bankruptcy fraud working groups in which members collaborate to investigate and prosecute criminal conduct. In these working groups, the Program serves as a resource for information, education, and training on the bankruptcy system and specific law enforcement initiatives. 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, U.S. Attorneys' offices, Criminal Division, and FBI, as well as representatives from federal agencies including the Internal Revenue Service, Department of Housing and Urban Development's Office of Inspector General (HUD OIG), Treasury Department, Social Security Administration's Office of Inspector General (SSA OIG), U.S. Postal Inspection Service, Veterans Administration, Federal Trade Commission, Securities and Exchange Commission, and Commodities Futures Trading Commission.



Richard Byrne, Chief of Criminal Enforcement

In addition, there are approximately 48 local working groups in which members work together to pursue bankruptcy fraud within their judicial districts. These local bankruptcy fraud groups may include representatives from the U.S. Attorney's office, FBI, U.S. Secret Service, IRS, HUD OIG, U.S. Postal Inspection Service, SSA OIG, and other federal law enforcement agencies. The working groups discuss emerging issues, develop criminal referrals, and provide bankruptcy fraud training.

Operation 'SILVER SCREEN'

The breadth of bankruptcy crime enforcement actions taken by the Department was demonstrated during FY 2005 with "Operation SILVER SCREEN"—the filing of 17 criminal cases against 21 defendants in 11 districts. The cases collectively involved the concealment of more than \$7 million in assets. The alleged violations were committed by a variety of debtors, including an attorney, a certified public accountant, and a police officer. The criminal conduct charged included the use of false Social Security numbers, identity theft, use of forged court documents, false statements, and other fraudulent acts.

Twelve SILVER SCREEN defendants have pleaded guilty or been convicted, while other cases remain pending. The cases in which the defendant has entered a plea or been convicted include the following:

- A former trading and investment firm executive was convicted in the Northern District of Illinois

on 18 counts of bankruptcy fraud, wire fraud, and money laundering, and one count of using a fire to commit wire fraud. The man intentionally set fire to his residence to obtain insurance money, making it appear as if the fire were set by his elderly mother, who died in the fire. After receiving the insurance proceeds, he secreted them in an offshore account in Curacao. He later filed bankruptcy and concealed the off-shore account containing more than \$300,000. The case was prosecuted by the CrEU's Regional Criminal Coordinator in Chicago, and witnesses included the Atlanta Assistant U.S. Trustee.

- Following his guilty plea to bankruptcy fraud, a man charged with submitting a false bankruptcy petition to a local sheriff's office to delay repossession of his vehicle was sentenced in the Eastern District of Pennsylvania to 15 months in prison and ordered to pay restitution. The man was also charged with failing to disclose nine prior bankruptcy cases when he filed Chapter 13 bankruptcy, and sending a credit card company a forged letter—purportedly from the bankruptcy judge—that falsely stated he had no bankruptcy case pending. Furthermore, after the man was barred from refiling bankruptcy without court approval, he filed again using his son's name and Social Security number. The matter was referred by the Philadelphia office, which also provided testimony at the sentencing hearing.
- A man who engaged in a scheme to defraud health insurers was sentenced to 51 months in prison and fined \$50,000 after pleading guilty in the Northern District of Ohio to bankruptcy fraud, health care fraud, and tax evasion. The man submitted false Certificates of Medical Necessity for wheelchairs and billed for wheelchairs never delivered. When the man placed the business in bankruptcy, he used bankruptcy estate funds to pay for his condominium renovation. He also evaded federal income taxes by failing to report that the business paid more than \$282,000 for his personal expenses, including credit card bills, condominium renovations, boat repairs, and yacht club dues. After pleading guilty, the man operated a debt elimination company, fraudu-

lently promising credit card holders that he could legally eliminate their debts without bankruptcy. Due to this continuing criminal activity, the district court imposed a sentence at the highest end of the applicable sentencing guideline range. An attorney from the Cleveland office served as a Special Assistant U.S. Attorney in the case.

- A man pleaded guilty in the District of Oregon to making a false oath after he sold a vehicle that was bankruptcy estate property and secretly kept part of the proceeds. Two of his acquaintances filed bankruptcy and asked him to sell their Jaguar. The man sold the Jaguar for approximately \$20,000, failed to turn over all the proceeds, and falsely testified about the sale amount. The Portland office investigated and referred the case, and the CrEU's Regional Criminal Coordinator in Boise prosecuted it.

Complex Schemes

Virtually any type of criminal conduct can arise in connection with a bankruptcy case. A bankruptcy filing may be the last violation in a series of inter-connected crimes including tax fraud, bank fraud, mail fraud, securities fraud, money laundering, embezzlement, real estate fraud, and perjury. The Program may coordinate with the FBI, IRS CID, U.S. Postal Inspection Service, and other federal agencies to investigate such cases. The following are examples of complex cases in FY 2005 involving multiple crimes:

- A former police officer was sentenced in the Southern District of Florida to 96 months in prison and three years supervised release, and ordered to pay more than \$2.2 million in restitution, for his role in a multi-million dollar bankruptcy and tax fraud scheme. The former officer pleaded guilty to bankruptcy fraud and tax evasion for his actions as principal of a waste hauling company in Chapter 11 bankruptcy. During the bankruptcy case, the officer concealed over \$2.2 million in assets and income belonging to two Chapter 11 debtor companies he controlled. More than \$500,000 was stolen through the submission of false invoices to various companies. The Miami office provided documentary assistance to the U.S. Attorney in the case.

- A guilty plea to wire fraud, fraudulent use of Social Security numbers, and bankruptcy fraud resulted in a 30-month sentence for a Chapter 7 debtor in the District of New Hampshire. The debtor was also sentenced to three years supervised release and ordered to pay \$347,928 in restitution, including \$137,000 to be paid to the Chapter 7 trustee. The debtor operated a cleaning service that used a fraudulent billing scheme and engaged in a conspiracy to provide workers with false Social Security numbers. The Manchester office assisted in the investigation by gathering evidence and obtaining the debtor's confession to concealment of cash, real estate, and accounts receivables in his bankruptcy case. The U.S. Trustee also successfully moved to reopen the bankruptcy case, and obtained appointment of the trustee and revocation of the debtor's discharge.

- The former chief executive officer of a trailer and container manufacturer in the Northern District of Indiana was sentenced to 87 months in prison and three years supervised release, and ordered to pay almost \$8.65 million in restitution, based on his conviction for mail fraud and wire fraud. With a co-defendant, the corporate officer engaged in a scheme to defraud three lending institutions by submitting fraudulent accounts receivable and loan applications. The South Bend office referred the matter after the company filed Chapter 11 bankruptcy and financial irregularities surfaced. A trial attorney testified at the criminal trial.

- For their roles in the Chapter 11 bankruptcy case of Hawaiian Airlines, Inc., two men were convicted in the Southern District of New York—one on a charge of conspiracy to commit bankruptcy fraud and the other on charges of commercial bribery and conspiracy to commit bankruptcy fraud. One of the men fraudulently claimed to be a manager and the other fraudulently claimed to be a trustee of an entity that purportedly would provide approximately \$300 million in new capital to fund the Hawaiian Airlines reorganization. One man bribed an FBI undercover agent, who was posing as a

hedge fund manager, by offering a kickback in exchange for the hedge fund's loan of approximately \$2.5 million to pay expenses purportedly related to obtaining bankruptcy court approval for the airline's reorganization. The men also filed false declarations and submitted altered documents to the bankruptcy court to support their claims. A trial attorney from the Honolulu office testified as a witness in the case.



Nancy Gargula, U.S. Trustee, Indiana and Southern and Central Illinois

- A Las Vegas author of self-help books on how to become wealthy pleaded guilty in the District of Nevada to money laundering in connection with a marketing scheme that defrauded over 50,000 victims of more than \$30 million. On one day alone, the man wire-transferred approximately \$2.2 million that included fraud proceeds. The man marketed various programs for which customers paid marketing fees, subscription fees, and other charges. When he placed his company in bankruptcy, more than 4,000 victims filed claims for over \$15 million. He was sentenced to three years in prison and ordered to pay approximately \$2.2 million in restitution to the bankruptcy estate. The Las Vegas office worked with the U.S. Attorney and the U.S. Postal Inspection Service on the investigation and prosecution of the case.

Real Estate and Mortgage Fraud

The Program works closely with other federal agencies such as the FBI and HUD OIG to pursue real estate and mortgage fraud in bankruptcy cases. Bankruptcy-related real estate and mortgage fraud schemes usually fall into three general categories: straw buyer schemes, rescue fraud, and equity skimming.

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

Rescue fraud preys upon owners or tenants who are facing foreclosure or eviction. The scheme operator claims to provide counseling and other services to help victims avoid foreclosure or eviction. Instead, for a fee, the operator advises the victim to file bankruptcy in order to invoke the automatic stay and temporarily halt collection action. In violation of Bankruptcy Code Section 110, the operator counsels the victim to hide the fact that the operator prepared the petition.

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

The following are among the cases involving bankruptcy-related real estate and mortgage fraud in FY 2005:

- A bankruptcy petition preparer who participated in an equity skimming scheme was convicted by a jury in the Southern District of California on 12 counts of bankruptcy fraud and eight counts of knowingly disregarding bankruptcy rules and procedures. He solicited homeowners who faced foreclosure, falsely representing that he would help save their homes by negotiating with lenders and by using funds paid to him by the homeowners to repay their mortgage debt. Instead, without the homeowners' knowledge, he caused the execution of deeds transferring interests in the property to third parties, and filed serial bankruptcy petitions in the name of the homeowners and others to delay foreclosure. He was ultimately sentenced to 24 months in prison and three years supervised release, and ordered to pay restitution. A trial attorney from the San Diego office testified at trial as an expert witness on bankruptcy law. The U.S. Trustee also obtained denial of the petition preparer's discharge in a civil enforcement action.
- A disbarred attorney who engaged in rescue fraud was sentenced in the District of Maryland to 18 months in prison and ordered to pay restitution after a jury convicted her of bankruptcy

fraud. The attorney filed bankruptcy petitions for persons to whom she provided "foreclosure assistance," listing her attorney employer as counsel of record without the attorney's knowledge and using her home address for the debtors' addresses. She also engaged in a continuing scheme to defraud in her personal bankruptcy case filed in the Eastern District of New York. The Greenbelt office discovered the rescue fraud and referred the case for prosecution.

- A jury in the Northern District of California convicted a bankruptcy petition preparer on 22 counts arising from her bankruptcy fraud and criminal contempt. Previously, the District Court for the Northern District of California awarded a debtor \$62,680 in damages against the petition preparer and her husband, also a petition preparer, in an action filed by the Oakland office. The U.S. Trustee learned the petition preparers took advantage of the debtor, an elderly woman with dementia, by having her deed her home jointly to herself and the preparers. The preparers placed the woman in Chapter 13 bankruptcy to stave off her creditors, brought about a below-market sale of the home, and attempted to dismiss the case to fraudulently divert equity in the home. The U.S. Trustee referred the criminal matter after discovering scores of petitions the couple filed after they were enjoined from preparing petitions. The Oakland Assistant U.S. Trustee testified in the criminal matter and the CrEU's Regional Criminal Coordinator in Boise assisted the prosecutor.
- A jury in the Eastern District of California convicted a serial bankruptcy filer on six counts of bankruptcy fraud, two counts of money laundering, and one count each of securities fraud and bank fraud. The debtor was later sentenced to 121 months in prison and 60 months supervised release, and ordered to pay \$270,000 in restitution. The debtor filed bankruptcy nine times since 1986, using various names and Social Security numbers. He failed to list prior cases, and in some cases failed to disclose he was married. A criminal referral by the Sacramento office coordinated with the FBI's investigation of the

debtor for alleged securities fraud violations. The debtor convinced homeowners to transfer title to their homes to him so he could help them refinance, but ultimately the homeowners lost their homes. The debtor also convinced members of his church to invest with him. He used the “invested” funds to purchase real estate in his name, collected rent on the property, and failed to pay the mortgage. Working with the FBI, the U.S. Trustee identified six real properties held by the debtor but not disclosed in his bankruptcy cases. The Sacramento Assistant U.S. Trustee and a paralegal testified at the debtor’s three-week trial.

Crimes by Bankruptcy Professionals

On occasion, bankruptcy attorneys, bankruptcy petition preparers, bankruptcy trustees, and/or their employees engage in criminal activities to unjustly enrich themselves at the expense of the debtor, creditors, and other participants in the bankruptcy proceeding. Crimes include embezzling from the bankruptcy estate, helping debtors conceal assets, and engaging in activities that abuse the integrity of the bankruptcy process. The following are among the cases in FY 2005 that involved crimes by bankruptcy professionals:

- A former Chapter 7 panel trustee was sentenced in the Central District of California to 80 months in prison and ordered to pay almost \$4 million in restitution, after pleading guilty to violating his fiduciary duties in several bankruptcy cases and brokering a votes-for-cash scheme involving city contracts. The trustee’s crimes included taking kickbacks from professionals and contractors he hired in a number of bankruptcy cases. The court noted the extensive harm the trustee caused to the bankruptcy system and the bankruptcy estates he administered, and his evident lack of remorse. After pleading guilty, the trustee failed to cooperate with the Los Angeles office in reconstructing bankruptcy estate records, making it harder to ensure all damage to the estates would be addressed through trustee fidelity bonds. Nonetheless, the U.S. Trustee and successor trustees obtained settlements with the bonding companies for approximately \$2.1 million payable to the affected estates. The court ordered the former trustee to pay \$2.1 million in

restitution to those bonding companies and almost \$1.9 million in restitution to six bankruptcy estates. The U.S. Trustee assisted throughout the investigation and prosecution, including providing a victim statement at the sentencing hearing.

- An attorney in the Southern District of Texas received a sentence of 30 months in prison and five years probation based on her guilty plea to wire fraud and bankruptcy fraud. The attorney defrauded her clients and their creditors by incurring unauthorized charges on her clients’ credit cards and by taking possession of and using collateral her clients intended to surrender to creditors. The Houston office referred the matter and assisted in the investigation and prosecution. The court cited the U.S. Trustee’s victim impact statement in its decision to grant a two-level upward departure for the attorney’s position of trust and her commission of crimes against multiple victims. The U.S. Trustee previously obtained an agreed judgment enjoining the attorney from practicing law in the district and requiring her to disgorge excessive fees. In a separate state court proceeding, the attorney resigned her Texas law license in lieu of discipline.

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

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

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



*Data Integrity Group
Members Dan Casamatta, Grand Rapids;
Elizabeth Amorosi,
Phoenix*

with the SSA OIG in cases involving use of one or more false or stolen SSNs.

In a credit card bust-out, a debtor attempts to discharge high credit card charges incurred with no intent to repay. Particularly if the bust-out is part of an organized scheme, the

individual might begin by making false statements on the credit card application—giving a false name and/or Social Security number, false employment history, and inflated salary information to qualify for a higher credit limit.

Typically, purchases and cash advances are incurred within a two- or three-month period, with charges sometimes incurred on multiple credit card accounts on the same day. A bankruptcy case is eventually filed to discharge the debt. The U.S. Secret Service, which is charged with investigating credit card fraud, may coordinate with the Program in pursuing credit card bust-outs.

The following are among the cases in FY 2005 that involved these types of bankruptcy crimes:

- A debtor arrested in a bankruptcy fraud sweep was sentenced in a case investigated by the Bankruptcy Fraud Task Force for the District of New Jersey, which includes the Newark office. The debtor was ordered to pay \$318,832 in restitution and sentenced to two years supervised release after pleading guilty to bankruptcy fraud for his role in a credit card bust-out.
- A woman was prosecuted on bankruptcy fraud charges in the Southern District of Iowa after appearing on a three-part television news feature in Cedar Rapids to discuss how she filed bankruptcy without her husband's knowledge and discharged almost \$100,000 in credit card debt. When she appeared on television she was given a pseudonym and her face was obscured, but the Chief Bankruptcy Judge for the Northern District of Iowa referred the matter to the Cedar Rapids office, which identified her from significant details she provided on television. Among other things, on her bankruptcy petition the woman falsely listed her marital status as "separated" and gave a false address for her residence. The Cedar Rapids and Des Moines offices worked with the U.S. Attorney on the criminal case. Ultimately, the woman pleaded guilty to charges arising from her false statements in the bankruptcy case.
- The president of a Chapter 11 debtor company was sentenced in the Western District of Louisiana to 21 months in prison followed by three years supervised release, and ordered to pay \$164,984 in restitution, after pleading guilty to concealment of assets. On the day of the Chapter 11 filing, the company president opened a new bank account in the company's name. The president did not disclose this account and, in an eight-month period, he deposited \$164,984 into the account and wrote checks to himself for personal and business expenses. The Shreveport office referred the case for prosecution.
- In unrelated cases, two married couples in the District of Kansas engaged in false statements and other criminal conduct. In one case, a woman was sentenced to 48 months in prison and three years supervised release after pleading guilty to bankruptcy fraud and making a false statement to a financial institution, and her husband was sentenced to 24 months in prison and three years supervised release after pleading guilty to bankruptcy fraud. When the couple filed Chapter 13 bankruptcy in 2003, they did not disclose that they had filed bankruptcy seven times since 1989, both jointly and separately, with four cases filed within the previous six years. In addition, the wife used different Social Security numbers to obtain residential loans and a business line of credit. In another case, both spouses were sentenced to prison on charges arising from false statements in their joint Chapter 7 case. After a jury convicted the husband on two counts of mail fraud and one count of bankruptcy fraud, he received an 18-month sentence; the wife pleaded guilty to one count of bankruptcy fraud and was sentenced to three months in prison and two years probation. The debtors filed bankruptcy using false Social Security numbers and filed a fraudulent bond claim against the Chapter 7 trustee. The Wichita office referred all of the cases and assisted in the investigations and prosecutions.



Chapter 5

Litigation in Chapter 11 Business Reorganizations

Chapter 11 Reorganization

In FY 2005, the Program participated in thousands of Chapter 11 reorganization cases, ranging from small sole proprietorship cases to cases filed by giant multinational conglomerates. Without substituting its business judgment for that of parties with a monetary stake in a case, the Program focuses its attention on matters such as the appointment of official committees of creditors and equity holders; the retention of professionals to serve in the case; review and approval of professional fee applications; and review of disclosure statements, particularly in smaller cases.

In FY 2005, as in the preceding fiscal year, cases filed by major airlines were among the most significant Chapter 11 reorganizations. During FY 2004 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. In FY 2005, Delta Air Lines, ATA Holdings (the parent company of Air Tran Airways) and Northwest Air filed Chapter 11 cases, while Hawaiian Airlines repaid unsecured creditors 100 percent under a confirmed reorganization plan. When they filed their cases, Delta Air Lines reported \$21.8 billion in assets, Northwest Air reported \$14.1 billion, and ATA Holdings reported \$908 million. Major issues in the airline cases included retaining or rejecting labor agreements, renegotiating aircraft lease payments, and retaining or terminating defined benefit pension plans.

Also significant in FY 2005 were Chapter 11 cases involving Catholic church archdioceses or dioceses. The Chapter 11 case filed in FY 2005 by the Diocese of Spokane, Washington, along with the cases of the Archdiocese of Portland, Oregon, and the Diocese of Tucson, Arizona, both filed in FY 2004, raised complex matters primarily relating to claims by victims of sexual abuse. Issues included the identification of potential sexual abuse claimants and future claimants; the valuation of claims; the scope of bankruptcy estate assets available for distribution to creditors; and the amount to be recovered through the debtors' lawsuits against their insurers. During FY 2005, the bankruptcy court confirmed the Diocese of Tucson's reorganization plan, under which the diocese funded a settlement trust to compensate tort claimants.

U.S. Trustees' Duties

U.S. Trustees perform certain tasks in Chapter 11 cases, including:

- Reviewing "first day" orders—emergency orders

early in a bankruptcy case—to ensure the requested relief is tailored to the circumstances.

- Conducting initial debtor interviews to discuss the debtor's financial situation and reasons for filing the case, consider the debtor's plans for reorganization, and advise the debtor of its fiduciary obligations and the U.S. Trustee's role in case administration.
- Appointing official committees that represent the interests of creditor groups in the case, such as unsecured creditors.
- Conducting the first 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 a trustee or examiner upon court order if certain statutory conditions are met.
- Monitoring employment and compensation of professionals who serve in the case and receive payment from the bankruptcy estate.
- Engaging in oversight to ensure that required schedules, statements, monthly operating reports, and other documents are timely filed and that the debtor manages money and assets consistent with the Bankruptcy Code and with its fiduciary duty to creditors.
- Reviewing reorganization plans and disclosure statements filed by parties to determine whether they provide adequate information.
- Taking action that prevents undue delay, such as filing a motion to dismiss the case, convert the case to a Chapter 7 liquidation, or appoint a trustee.
- Pursuing civil penalties for fraudulent or abusive conduct.
- Referring cases of apparent criminal fraud to the U.S. Attorney for investigation and criminal prosecution.

Appointment of Trustees and Examiners

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

Alternatively, the U.S. Trustee or another party may seek, and the court may order, appointment of an examiner to investigate and report on the debtor’s conduct, assets, liabilities, business operations, and financial conditions. 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. When an examiner is appointed, the debtor’s management remains in place.

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 2005, U.S. Trustees filed 117 motions to appoint a trustee or examiner. During that period, 97 motions to appoint a trustee or examiner were granted and six were denied.

Cases in which the U.S. Trustee appointed a trustee or examiner in FY 2005 include the following:

- The Bankruptcy Court for the District of Massachusetts agreed with the Boston office that a Chapter 11 trustee should be appointed in related cases filed barely 180 days after the debtors’ reorganization plan was confirmed in a prior Chapter 11 case. In addition to objecting to the debtors’ request for financing, the U.S. Trustee

noted potential conflicts of interest of various professionals and the debtors’ failure to inform the court of the failed prior Chapter 11 case or to produce current financial information. Within approximately six months after being appointed by the U.S. Trustee, the Chapter 11 trustee negotiated sales of the debtors’ assets, including the sale of a manufacturing facility for approximately \$181 million—sufficient to pay 100 percent of general unsecured claims and a substantial distribution to equity holders.

- A motion by the Corpus Christi office to appoint a trustee in the case of a limited partnership was granted by the Bankruptcy Court for the Southern District of Texas, after the U.S. Trustee argued that bankruptcy could not shield a debtor from liability stemming from hazardous conditions on its property. The family-owned limited partnership held vacant land, condominium units, commercial real estate, investments in a related mortgage company, and a used car business. Its major assets were undeveloped land in Hawaii and an abandoned hospital adjacent to an elementary school in Corpus Christi. The debtor repeatedly failed to supply financial and business documentation such as monthly operating reports, bank account information, and settlement statements from property purchases and sales; allegedly misappropriated more than \$400,000 in funds received from an investor in exchange for an interest in a property; and failed to respond to city officials seeking to secure the abandoned hospital. Just prior to the hearing on the U.S. Trustee’s motion to appoint a trustee, school children entered the building and found the dead body of a drug overdose victim. The trustee negotiated a sale of the Hawaii property for an amount sufficient to pay creditors, and the abandoned hospital was secured and sold.
- The Bankruptcy Court for the Middle District of Florida granted a motion by the Tampa office to dismiss the bankruptcy case of an ice skating rink business controlled by a disbarred attorney convicted of bank fraud in Massachusetts. The U.S. Trustee asked the court to dismiss or convert the case or to appoint a Chapter 11 trustee

Alan Sibarium, EOUST;
John Daugherty,
Greenbelt

because the debtor was paying officers and insiders instead of post-petition operating expenses; the debtor's insurance policy was scheduled to expire and its electric service was going to be turned off; the debtor had not filed monthly operating reports; and the debtor's premises lacked the controls necessary to safeguard a significant cash business.

- The San Diego office's motion to appoint a trustee in four cases involving debtors that provided financial and investment services to doctors was granted by the Bankruptcy Court for the Southern District of California due to alleged conflicts of interest and breaches of fiduciary duty by the debtors' officers. At issue were pre- and post-petition transactions between the debtors and between the debtors and non-debtor affiliates, as well as the fact that the sole officer of one debtor was employed by the proposed buyer of substantially all the debtors' assets.
- Upon motion of the Worcester office, the Bankruptcy Court for the District of Massachusetts ordered the appointment of an examiner to investigate any acts of fraud, dishonesty, or financial and management irregularities by a debtor and its former officers. The U.S. Trustee brought the motion after learning, among other things, that former management listed fictitious sales, inflated the company's assets and revenues, maintained two sets of books, and removed books and records from the debtor's premises.

Employment of Professionals

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

During FY 2005, 4,708 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 \$60 million.

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

- The Tenth Circuit Court of Appeals affirmed a ruling by the Bankruptcy Appellate Panel for the Tenth Circuit, substantially reducing fees requested by the financial advisor for the committee of asset-based securities holders in the case of a financial services provider. Upon objection by the Tulsa office and the unsecured creditors' committee, the Bankruptcy Court for the Northern District of Oklahoma had denied the financial advisor's requested fees of more than \$1.9 million, which were determined according to a flat monthly rate. However, the bankruptcy court allowed fees of \$905,000 determined by an hourly rate supported by contemporaneous time records. The Bankruptcy Appellate Panel affirmed this ruling and the financial advisor appealed. The Tulsa Assistant U.S. Trustee assisted the Civil Division in arguing the case before the Tenth Circuit Court of Appeals, which found that the bankruptcy court appropriately exercised its powers to require the financial advisor to report the number of hours it worked and calculated a reasonable fee looking to rates charged by other financial advisors employed in the case.
- The Great Falls office agreed to settle an appeal to the Court of Appeals for the Ninth Circuit, resulting in denial of almost \$1.5 million in fees and costs requested by Chapter 11 debtor's counsel and disgorgement of \$413,931 in fees and costs previously received by counsel. The appeal arose from the bankruptcy court's prior order disqualifying the law firm for the debtor—a manufacturer of power tool accessories—and disallowing and requiring disgorgement of virtually all fees and costs. The law firm failed to disclose the terms of a limited conflicts waiver entered into with the debtor's primary lender, under which the firm agreed not to represent the debtor in litigation directly adverse to the lender. The bankruptcy court ruled the firm failed to



Paul Thomas, Tulsa

comply with the Bankruptcy Code's disclosure requirements for employment of professionals, and the failure to disclose was sanctionable even if negligent or inadvertent. The law firm appealed to the Ninth Circuit after the district court affirmed the bankruptcy court on appeal.

- The financial advisor for the unsecured creditors' committee in the case of a telecommunications company agreed to forgo payment of fees of \$75,000 per month after December 2004 and to reduce fees by an additional amount, while continuing to work on the case. A former director of the financial advisor left that company to become the principal of an entity that acquired assets of the debtors through a third-party purchaser. The director had advised the creditors' committee regarding the adequacy of the sale price offered by the third party. The director's move to the purchaser was not disclosed. The Manhattan office objected to the financial advisor's fees due to the inadequate disclosure of possible conflicts. The U.S. Trustee also secured a \$200,000 reduction in fees from counsel for the creditors' committee, for failing to adequately monitor the financial advisor's actions.
- In the case of an Internet retailer, the Bankruptcy Court for the District of Delaware approved a settlement under which, due to undisclosed relationships, the law firm for the unsecured creditors' committee disgorged \$750,000 in fees. The law firm had stated it had no relationship with the debtor or its officers. After the bankruptcy court approved the law firm's employment, the firm failed to disclose that one of its partners had recently formed an asset liquidation consulting firm in partnership with the debtor's new chief executive officer, whom the law firm had recommended to the debtor. The law firm had also loaned money to the asset liquidation consulting firm, and had previously engaged the new CEO as a consultant in matters unrelated to this case. The Wilmington office learned of the undisclosed relationships after the debtor's reorganization plan was confirmed and the law firm's final fee application was approved. Because the deadline under 11 U.S.C. § 1144 for

revoking the confirmation order based on fraud had passed, the U.S. Trustee pursued the theory of fraud on the court. It asserted that the firm's actions resulted in a grave miscarriage of justice, by circumventing effective court oversight of professionals and depriving the court of the ability to assess the firm's continued disinterestedness after the debtor employed the CEO.

- Ruling for the Richmond office, the Bankruptcy Court for the Eastern District of Virginia denied an application for \$604,736 in professional fees submitted by a member of the unsecured creditors' committee. The U.S. Trustee argued that creditors' committee members were more than adequately represented by the law firm and financial advisor approved by the bankruptcy court. The court entered an order approving the withdrawal of the fee application and barred the committee member from making additional requests.
- The Honolulu office challenged professional employment or fees in two cases involving major airlines. In one case, the Bankruptcy Court for the District of Hawaii disqualified counsel for the unsecured creditors' committee based on the discovery that the firm previously issued an opinion letter confirming the validity of the debtor's secured loan. The firm's internal check for conflicts of interest did not uncover the issuance of this letter. The creditors' committee was investigating whether to object to the lenders' secured status, and therefore the court agreed with the U.S. Trustee that there was a direct conflict of interest precluding the firm from representing the committee. In the other case, the court agreed with the U.S. Trustee that the Chapter 11 trustee's final request for \$9.15 million in fees and \$276,000 in expenses was excessive. The court reduced the fees to \$1.4 million.

Preservation of Estate Assets

The U.S. Trustee takes action to ensure that proper procedures are followed to preserve and enhance the value of estate assets for potential distribution to creditors.

The U.S. Trustee reviews reorganization plans and disclosure statements filed by parties to determine whether

they provide adequate information and meet the statutory standards for approval and confirmation. During FY 2005, U.S. Trustees filed 630 objections to disclosure statements and 281 objections to confirmation of debtors' plans. Objections to disclosure statements were sustained in 477 cases, while confirmation was denied or plans were voluntarily amended in 186 cases after a formal objection had been filed. In 99 cases, debtors voluntarily amended their plans of reorganization to comply with the U.S. Trustee's concerns without the need for formal court action.

The U.S. Trustee also takes action to prevent undue delay in Chapter 11 cases by, for example, filing a motion to dismiss a case or to convert a case to a Chapter 7 liquidation. During FY 2005, U.S. Trustees filed 2,938 motions to dismiss or convert Chapter 11 cases. During the same period, 2,365 motions to dismiss or convert were granted and 69 were denied.

The following is an example of a U.S. Trustee action to preserve estate assets:

- Objections by the U.S. Trustee's Newark office led to a land sale for more than twice the original price in the case of a debtor hotel and casino enterprise. The debtor's confirmed reorganization plan authorized the creditors' committee to sell a land parcel. The committee's sale motion provided for the proposed \$12.5 million sale to a bidder who was a former committee member and a \$360,000 breakup fee payable to the bidder if the sale did not go forward. The sale motion also required the former committee member to provide a good faith deposit of \$875,000, while other bidders were required to provide deposits of almost \$1.3 million. The U.S. Trustee objected to the break-up fee based on Third Circuit case law holding that payment of such a fee is appropriate only if actually necessary to preserve the value of the estate. It also objected to the other conditions. As a result, several parties bid on the property and it ultimately sold for more than \$25 million.

Appellate Matters

The Executive Office for U.S. Trustees works with the Appellate Staff of the Civil Division and with the Office of the Solicitor General, both of which are components of the Department, when prosecuting appeals before the Circuit Courts of Appeals and on discrete matters arising

before the Supreme Court. The Executive Office also works with the Appellate Staff of the Civil Division when defending appeals before the circuit courts, and approves the prosecution and defense of all appeals before the district courts and the bankruptcy appellate panels.

In FY 2005, the Program's position was upheld on appeal in a number of significant cases pending under Chapter 11, as well as cases pending under Chapter 7.

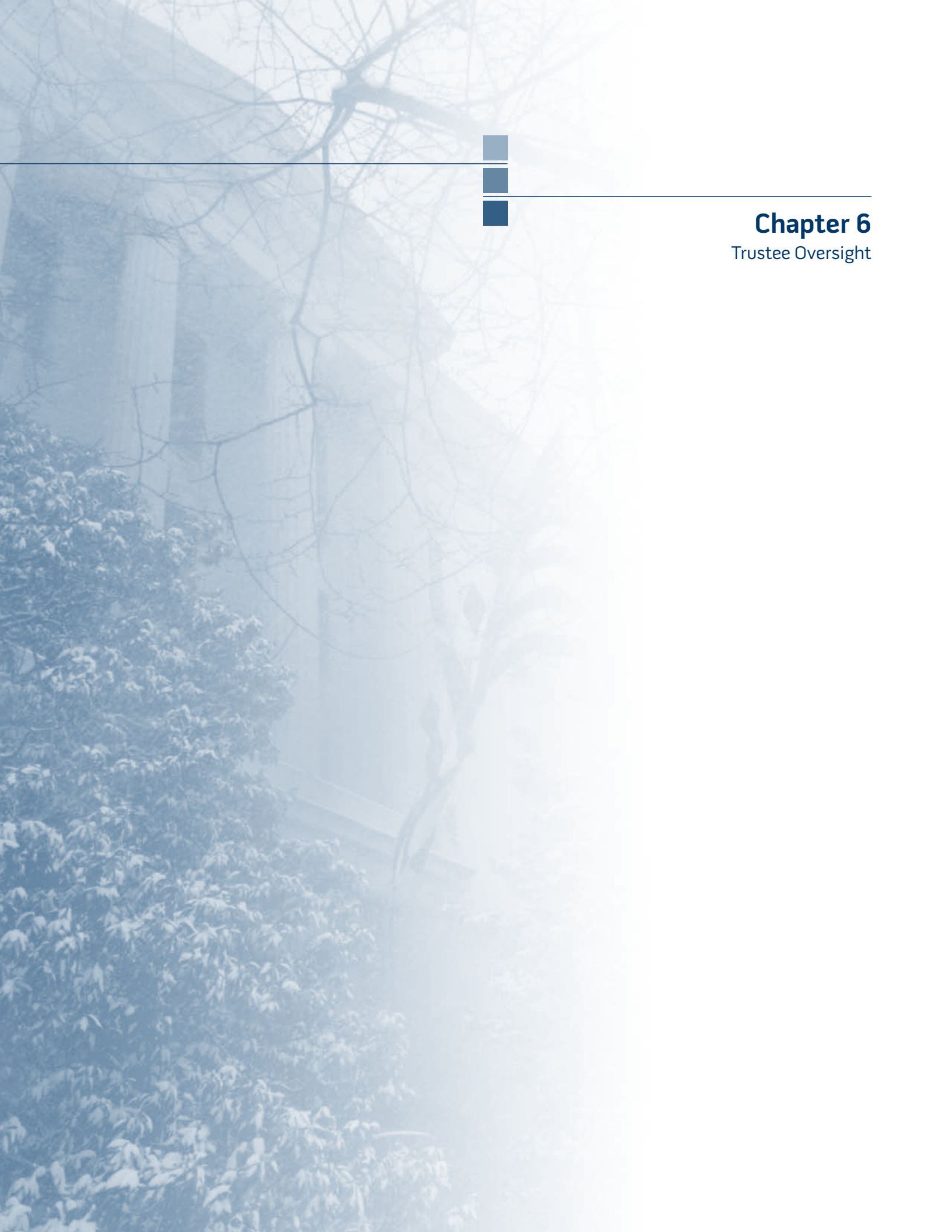
- In *In re Genesis Health Ventures Inc.*, 402 F.3d 416 (2005) ("*Genesis II*"), the Court of Appeals for the Third Circuit addressed the requirement of 28 U.S.C. § 1930(a)(6) that quarterly fees be paid "in each case." The debtor, a health care provider with hundreds of operating subsidiaries, relied on a provision in its reorganization plan stating that all cases were deemed consolidated for plan purposes only. After the debtor reorganized, 350 corporate debtors continued to exist and 350 cases remained open. Relying upon the statute's plain language, the bankruptcy court held quarterly fees were due in each open case, and the cases were not substantively consolidated. The district court and the Third Circuit affirmed.
- In *Nischwitz v. Miskovic (In re Airspect Air Inc.)*, 385 F.3d 915 (2004), the Court of Appeals for the Sixth Circuit overturned a bankruptcy appellate panel decision that allowed an attorney to receive a contingency fee under 11 U.S.C. § 328(a) even though the bankruptcy court's appointment order did not authorize such a term or condition of employment. The bankruptcy appellate panel held the attorney was entitled to the contingency fee because the attorney's agreement with the debtor called for it and the bankruptcy court's appointment order did not expressly overrule it. The Sixth Circuit agreed with the Program that, under the Bankruptcy Code, approval of compensation for "actual, necessary services rendered" under 11 U.S.C. § 330, rather than pre-approval under Section 328, forms the default rule. The court concluded that a finding of pre-approval based on less than the bankruptcy court's affirmative authorization of payment terms would be too lax.
- Deciding matters of first impression before the U.S. Courts of Appeals, the Court of Appeals

for the Ninth Circuit ruled in *In re Doser*, 412 F.3d 1056 (2005), that 11 U.S.C. § 110, which governs the conduct of non-attorney bankruptcy petition preparers, is constitutional as a valid exercise of Congress' powers under Article I of the U.S. Constitution to enact bankruptcy laws. It also ruled that Section 110's provision requiring bankruptcy courts to disallow excessive petition preparer fees is not unconstitutionally vague; Section 110's provision allowing for damages when petition preparers engage in fraudulent, unfair, or deceptive acts is not unconstitutionally vague; Section 110's regulation of petition preparers does not violate their First Amendment rights; and the bankruptcy court did not err in determining that the petition preparer's \$214 fee for preparing the papers in a simple consumer Chapter 7 case was excessive.

- Joining the U.S. Courts of Appeals for the Second, Seventh, and Ninth Circuits, in *Rittenhouse v. Eisen (In re Chandlier)*, 404 F.3d 395 (2005), the U.S. Court of Appeals for the Sixth Circuit agreed with the Program that a debtor's attorney is not entitled to collect on unpaid pre-petition attorney fees because those fees are discharged under 11 U.S.C. § 727(b). When the debtor filed bankruptcy, she owed her attorney \$800 for pre-petition work. The debtor's attorney argued he was entitled to collect on this debt pursuant to 11 U.S.C. § 329, which governs debtors' transactions with attorneys. The Program opposed the attorney on the ground that Section 329 constitutes a disclosure provision requiring all attorneys for debtors to disclose the fees they have charged and will charge their clients, and does not give the attorneys any right to fees beyond the express provision of the Bankruptcy Code.
- The Court of Appeals for the Seventh Circuit in *Weinschneider v. Hoseman (In re Weinschneider)*, 395 F.3d 401 (2005), addressed a debtor's request to grant an administrative expense priority for \$500,000 in personal attorney's fees, incurred while defending against an action brought by the Chapter 7 trustee after the case was converted from Chapter 11. The debtor relied upon case law under which damages resulting from the

negligence of a trustee acting within the scope of his authority give rise to actual and necessary costs entitled to priority payment. The Program opposed the debtor's request on multiple grounds, including that the case law doctrine was a narrow exception to the Bankruptcy Code's provisions governing administrative expenses and that the doctrine did not apply in this case because there was no trustee negligence. The Seventh Circuit adopted the Program's position.

- In *Tarbox v. U.S. Trustee (In re Reed)*, 405 F.2d 338 (2005), the Court of Appeals for the Fifth Circuit considered whether, in a Chapter 7 case where there is a surplus after all claims are paid, the trustee and the trustee's professionals are entitled to interest on their approved fees from the date the petition was filed. According to the trustee, 11 U.S.C. § 726(a)(5) provides that, before funds are distributed to the debtor, interest is paid on claims that have been paid under Section 726(a)(1)-(4). The trustee asserted this included trustee and professional fees. The bankruptcy court and the district court rejected the trustee's argument and the Fifth Circuit affirmed. It held Section 726(a)(1) applied only to pre-petition creditor claims given a priority under Section 507, not to trustee and professional fees.



Chapter 6

Trustee Oversight

Private Trustees

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

In FY 2005, trustees administering Chapter 7 cases closed almost 54,000 asset cases, generating \$1.82 billion in funds. Trustees administering Chapter 13 cases collected more than \$5.4 billion in FY 2005, averaging approximately \$28.4 million per trustee, with the largest trustee operations administering over \$100 million. Trustees administering Chapter 12 cases collected \$33.6 million, averaging more than \$700,000 per trustee.

The Program works closely with the various bankruptcy trustee associations to improve case administration and to address other matters of mutual interest. In FY 2005, Program staff and private trustees continued to work together to develop critical management reports and financial reporting and record keeping procedures that reduce the trustees' administrative burden while providing the Program with information necessary to fulfill oversight duties.

Legislative Implementation for Trustees

During FY 2005, the Program's trustee oversight activities focused to a large extent on helping the trustees implement the BAPCPA, including coordinating with the trustees to develop guidance on how to carry out shared responsibilities arising under the legislation. Some of the trustees' new responsibilities require access to information beyond the resources of many individual trustees; other new duties involve data collection and the development of nationally uniform reporting systems.

Before the enactment of the BAPCPA, the form and content of a trustee's final report varied from district to district. During FY 2005, the Program worked with trustees and trustee software vendors to design the nationally uniform final reports mandated by the new law. The Program began coordinating with the trustees and vendors to develop protocols to collect data elements required by the BAPCPA: duration of the case, assets abandoned, assets exempted, receipts and disbursements, expenses of

administration, claims asserted, claims allowed, distributions to claims, and claims discharged without payment. The Program endeavored to ensure that the final reports will provide information useful to government agencies, researchers, and the public; the trustees can collect the required information expeditiously and economically; and the privacy of bankruptcy participants will be safeguarded.

The BAPCPA requires trustees to help collect child support and alimony from debtors by providing notices and making disclosures to ex-spouses and child support agencies. The Program assembled the contact information for child support agencies nationwide and drafted sample notices that meet the statutory requirements. The Program also issued detailed guidelines to help the trustees meet the new notice and disclosure requirements.

The Program worked with the trustees to establish new procedures to implement requirements such as Chapter 7 means testing. For example, Program staff will take the lead in carrying out the Chapter 7 means test, including determining whether the presumption of abuse arises and filing appropriate notices and motions. Chapter 7 trustees will verify the calculation of current monthly income and collect documents from debtors who claim additional deductions for items such as education or additional food and clothing expenses. Trustees will also report any form of fraud or abuse of the system, as under the law before BAPCPA was enacted.

The Program established procedures for the trustees to follow when verifying that debtors meet the BAPCPA's credit counseling and debtor education requirements, and when seeking case dismissal or case closure without discharge for failure to meet those requirements.

The Program provided uniform BAPCPA-related training to all Chapter 7 and Chapter 13 trustees in their regions, in addition to the specialized training for recently appointed Chapter 7 and Chapter 13 trustees provided at the National Advocacy Center in Columbia, S.C. (see Chapter 9).

Other Activities

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



*W. Clarkson McDow, Jr.,
Acting Assistant
Director for Review
and Oversight*

Updated banking policies applicable to both Chapter 7 and Chapter 13 trustees incorporated the Check Clearing for the 21st Century Act, effective on October 28, 2004, which was designed to foster innovation and efficiency in the nation's check collection and payment system. Technical amendments to the



Handbook for Chapter 7 Trustees took effect in FY 2005, reducing the administrative burden on Chapter 7 trustees and

Sharon Brown, Victor Magnusen, Martha Hallowell, David McCracken, Jeanette Ogles, Suzanne Hazard, Rebecca Williams, Tammi Odoms, Debra Finan, EOUST

facilitating their electronic record keeping and paperless filing systems. Chapter 7 trustee audits were streamlined to increase efficiency and to target the most important aspects of Chapter 7 trustee operations.

A working group of Program employees and Chapter 13 trustees revised the *Handbook for Chapter 13 Standing Trustees*, although further revisions are required to incorporate mandates set forth in the BAPCPA. In addition, after consultation with Chapter 13 trustees, the Program rolled out a draft automated monthly reporting form that permits trustees to transmit data to the Program electronically. The new form is designed to make it easier for Chapter 13 trustees to prepare their annual reports.



Chapter 7

Planning, Evaluation, and Communications

Program Activities

The Program engages in planning, to direct its actions in pursuit of its mission; research, to further an understanding of the bankruptcy system; evaluation, to ensure accountability in its policies and practices; and communications, to expand general knowledge about the bankruptcy system and the Program's activities.

Program Assessment Rating Tool (PART)

Each year, the Office of Management and Budget (OMB) evaluates the efficiency and effectiveness of numerous federal agencies. In FY 2005, the U.S. Trustee Program was evaluated for the first time under the OMB's Program Assessment Rating Tool (PART), a rigorous review of an agency's performance and management that is a centerpiece of the President's Management Agenda.

The Program received a score of 90 and a rating of "effective"—the highest rating of any component of the Department of Justice that had been rated. The Program ranked among the top 15 percent of all government agencies rated.

The PART review examines factors that affect and reflect program performance including:

- 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.

Programs are rated effective (85-100), moderately effective (70-84), adequate (50-69), or ineffective (0-49).

The Program continues to maintain and improve its PART performance score, which is monitored quarterly. Future reviews will include a re-examination of the Program's performance measures following the implementation of the BAPCPA, as well as independent evaluations of Program operations to verify results.

Strategic Planning

In FY 2005, the Program published and disseminated its strategic plan covering FY 2005 through FY 2010, which reflects the Program's 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.



Pat Santos, EOUST

The strategic plan was distributed to all Program employees and is posted on the Program's Internet site at www.usdoj.gov/ust/eo/ust_org/mission.htm. The plan discusses the Program's mission, vision, values, goals, challenges, evaluations, and partnerships, and provides a foundation for future strategic planning and continuous operational improvements. It will be reviewed and revised annually.

Research and Evaluation

The Program continued developing a national study to examine fraud, abuse, and error in the bankruptcy system. The study will be coordinated by the National Institute of Justice, an evaluation component of the Department, and will include scholars, practitioners, and representatives of organizations and entities responsible for ensuring accountability and integrity within the bankruptcy system. In FY 2005 the Program contracted with RAND Corp. to conduct the study, selected members of the study group, and began the interview and research process.

The Program also began development of various studies and reports mandated under the BAPCPA, including a pilot study of a debtor education curriculum, a study on the use of Internal Revenue Service expense standards in means testing, and a report on the aggregate results of debtor audits. (For more information on studies and



Ed Flynn, EOUST

reports mandated by the BAPCPA, see Chapter 2.)

In addition, the Program collected data to use in evaluating its performance at the regional and field office levels. During FY 2005, the Program compiled regional and field office performance indicators,

and developed and implemented procedures to verify and analyze performance data.

Communications

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

Beginning in June, the Program issued press releases soliciting applications from credit counseling agencies and debtor education course providers; announcing approvals of credit counseling agencies and debtor education course providers; announcing temporary exemptions from the credit counseling and debtor education requirements for debtors affected by Hurricane Katrina; and announcing flexible BAPCPA enforcement guidelines for debtors affected by natural disasters. These press releases are posted on the Program's web site at www.usdoj.gov/ust/eo/public_affairs/press/index.htm.

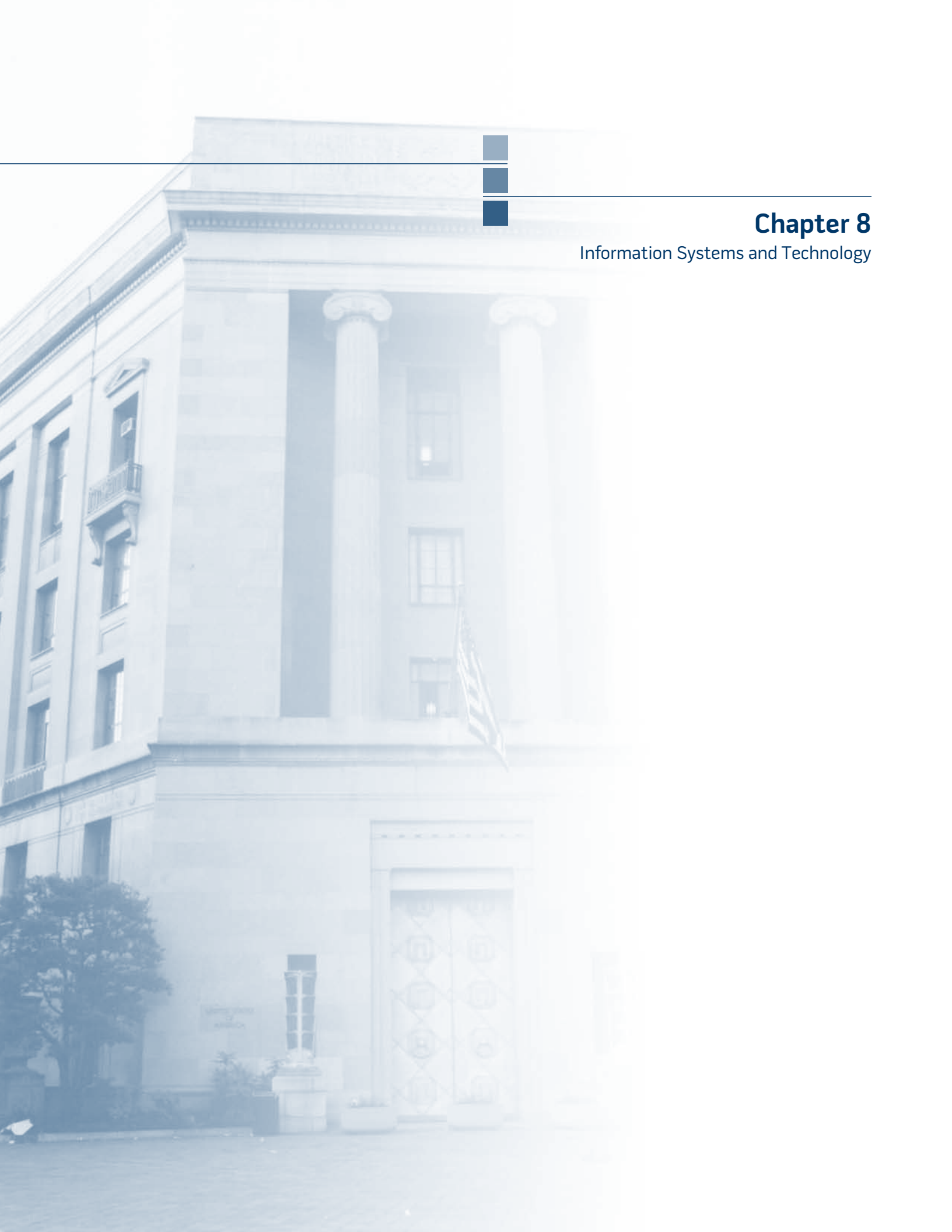
The Program created an area on its Internet site to provide public information about the BAPCPA and its implementation. Posted materials include:

- An overview of the Program's new responsibilities under the BAPCPA.
- The complete application materials for credit counseling agencies and debtor education course providers seeking U.S. Trustee approval.
- Lists of approved credit counseling agencies and debtor education course providers in each judicial district.

- Data required for the means-testing calculation, including Census Bureau data on state median incomes, Internal Revenue Service expense standards, and Chapter 13 administrative expense multipliers by judicial district.
- Contact information regarding holders of domestic support obligation claims and state child support enforcement agencies, for use by Chapter 7 and Chapter 13 trustees.
- Standards for "data-enabled" bankruptcy forms, which expedite case analysis for means-testing and other purposes.

In addition to providing information about the BAPCPA and its implementation, the Program continued to engage in outreach about bankruptcy law, the Program's general responsibilities, financial literacy, and related issues of interest to the public. Staff participated in a variety of outreach activities to increase public knowledge about the nation's legal and bankruptcy systems. These activities included hosting foreign officials, providing information at community fairs, giving speeches and publishing articles, and promoting and participating in financial literacy education programs.

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



Chapter 8

Information Systems and Technology

Automated Systems

In FY 2005, the Program undertook a massive effort to develop and launch new information technology applications in order to implement the BAPCPA. In the midst of this effort, the Program also implemented the new Criminal Enforcement Tracking System, new automated civil enforcement tools, and digital recording technology; continued to modernize its automated case management system; and maintained automated systems it uses to perform core functions such as managing more than one million new cases each year, supervising private trustees, appearing as a party in court, and collecting statutorily imposed fees.

Legislative Implementation

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

The Program created an automated system to track the new means test review process mandated under the BAPCPA. This included updating the daily court download process to receive data and documents for means test review.

The Program implemented an automated system to track the review of applications for approval as a pre-bankruptcy credit counseling agency or a pre-discharge debtor education course provider. Additionally, it began the development of a national database accessible via a secured Internet Web site to control the issuance of certificates of credit counseling and debtor education completion. Program staff will be able to cross-check information in this national database against the Program’s

case management data database to verify the authenticity of a certificate filed with the court.

To carry out the BAPCPA’s requirement for random and targeted audits, the Program developed plans for building a debtor audit database to facilitate efficient audit review processes, central management, selection of random and targeted debtors, receipt of electronic reports from auditors, tracking of auditor performance and status, management reports, and collection of statistical data required by the BAPCPA.

(For more on information technology projects relating to BAPCPA implementation, see Chapter 2.)

Criminal and Civil Enforcement

The Program implemented a new Criminal Enforcement Tracking System (CETS) that was pilot tested in FY 2004 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. In FY 2005, the Program implemented a bi-annual data integrity review of the CETS data and developed new reports to assist in managing these referrals.

The Program also implemented automated civil enforcement tools. These included templates, worksheets, and mortgage and tax calculators to assist with the screening and analysis for fraud and abuse, as well as a national multiple filer report to help track unlawful serial filings.

Electronic Case Filing

Nationwide, the bankruptcy courts are completing their move to an Internet-based electronic case filing system (ECF or e-filing) for the electronic submission of documents to, from, and within the courts. In FY 2005,



Joel Atkinson, Columbia; Diane Baker, New Orleans; Bernadette Onstad, Denver

the Program coordinated with 15 bankruptcy courts that converted to ECF, for a total of 85 out of 94 courts.

Other Activities

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 databases, and meet the long-term goal of a centralized computing system.

Since then, the Program has enhanced the original code to allow ACMS data to be combined with information in other databases and applications, and has copied

daily data from all 21 regions to a central database. In FY 2005, the Program re-hosted all 21 regional databases to a new central case management system server in Washington, D.C.

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. Digital recorders record the meeting transcript to a compact disc, so it can be copied and timely accessed from a central location. The Program procured digital recording technology to support all secured Section 341 meeting rooms—more than 400—at the end of FY 2004, and distributed that technology in FY 2005.

*Katie Kinnecome,
Linda Petronchak,
Krishna Singho,
Mike Waite, EOUST*



Chapter 9

Training

Legislative Implementation

After the BAPCPA was enacted on April 20, 2005, the Program launched a comprehensive nationwide training effort to prepare all employees for implementation of the new law. The Program's legislative implementation working group on training and public presentations developed curricula and created training agendas for staff training sessions. The working group also prepared materials for use in public presentations on the Program's new responsibilities.

This extensive national training effort included presenting 13 staff training courses in 10 cities over a three-month period. More than 900 employees received legislative implementation training. The first three training courses were held for Program managers to address the legislation's substantive aspects as well as its effects upon office organization and management. Subsequently, four courses were held for Program attorneys and six courses were offered for Program bankruptcy analysts and paralegals.

National Bankruptcy Training Institute

The legislative implementation training courses were held in FY 2005 in cities across the nation to reach the greatest number of employees in a short period of time. In general, however, most Program 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 is a part of the National Advocacy Center (NAC) located on the campus of the University of South Carolina in Columbia, South Carolina. The NAC is a cooperative partnership of the U.S. Attorney's Office of Legal Education, the Institute, and the National District Attorneys Association, and it offers training to federal, state, and local prosecutors and their staffs. The NAC's 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.

During FY 2005, the Institute hosted more than 300 Program attendees at six training courses. The Institute continued to provide civil enforcement training developed during the past several years, with emphasis on courtroom preparation and practice skills for attorneys and paralegals.

These courses were offered one or more times at the Institute in FY 2005:

- Criminal Bankruptcy Fraud
- Civil Litigation Skills
- Litigation Support: Tools and Skills
- Appellate Advocacy
- Information Technology Specialist/Case Manager Training
- Chapter 13 Coordinators Training



Melinda Moore, National Bankruptcy Training Institute, Columbia

Training for Private Trustees

In FY 2003 the Program provided its first training course for recently appointed Chapter 13 trustees, and in FY 2004 it launched a similar training course for recently appointed Chapter 7 trustees. Both sessions were held at the NAC. In FY 2005, the Program again offered training for recently appointed Chapter 7 and Chapter 13 trustees at the NAC. More than 80 trustees attended these courses, which are designed to enhance the trustees' skills, promote uniform standards of trustee performance, and supplement training on civil and criminal enforcement.

Training for Other Professionals

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



Trustee Training, Portland, Oregon

Examples of the Program's training outreach activities in FY 2005 include the following:

- The Criminal Enforcement Unit and the offices in Tampa and Orlando conducted two criminal enforcement training sessions for more than 70 law enforcement agents in the Middle District of

Florida. Attendees included agents from the FBI, Immigration and Customs Enforcement, IRS, and U.S. Probation Office.

- A trial attorney from the Cleveland office discussed bankruptcy principles, bankruptcy fraud, and documents available to fraud investigators at a meeting of the National Health Care Fraud Task Force that was sponsored by the U.S. Attorney for the Northern District of Ohio. The meeting was attended by Assistant U.S. Attorneys, other law enforcement personnel, and insurance company representatives involved in health care fraud investigations.
- For bankruptcy attorneys and their staff, the Norfolk office presented two seminars on civil enforcement and bankruptcy professionals'



Clara Dykes, Tulsa;
Ed Walsh, Wichita

responsibilities. The seminars addressed topics such as substantial abuse, attorney disclosures, fee disgorgement, using source documents when preparing bankruptcy papers, and representing debtors at Section 341 meetings.

- The South Bend Assistant U.S. Trustee, a Chapter 13 trustee, and a Chapter 7 trustee gave a presentation to attorneys and paralegals who work at the child support division of a county prosecutor's office. Topics included the civil enforcement initiative and bankruptcy-related issues in child support collection.
- The Assistant U.S. Trustee in Albuquerque discussed the function and operation of the U.S. Trustee Program with judges of the Russian arbitration court, which has jurisdiction over commercial law matters including bankruptcy cases.
- In Newark, the Assistant U.S. Trustee and a bankruptcy analyst spoke at the New Jersey Certified Public Accountants' Insolvency and

Reorganization Conference. They discussed the civil enforcement initiative, ongoing efforts to combat fraud and abuse, issues related to creditors' committees in Chapter 11 cases, and common errors on Chapter 11 debtors' monthly operating reports.

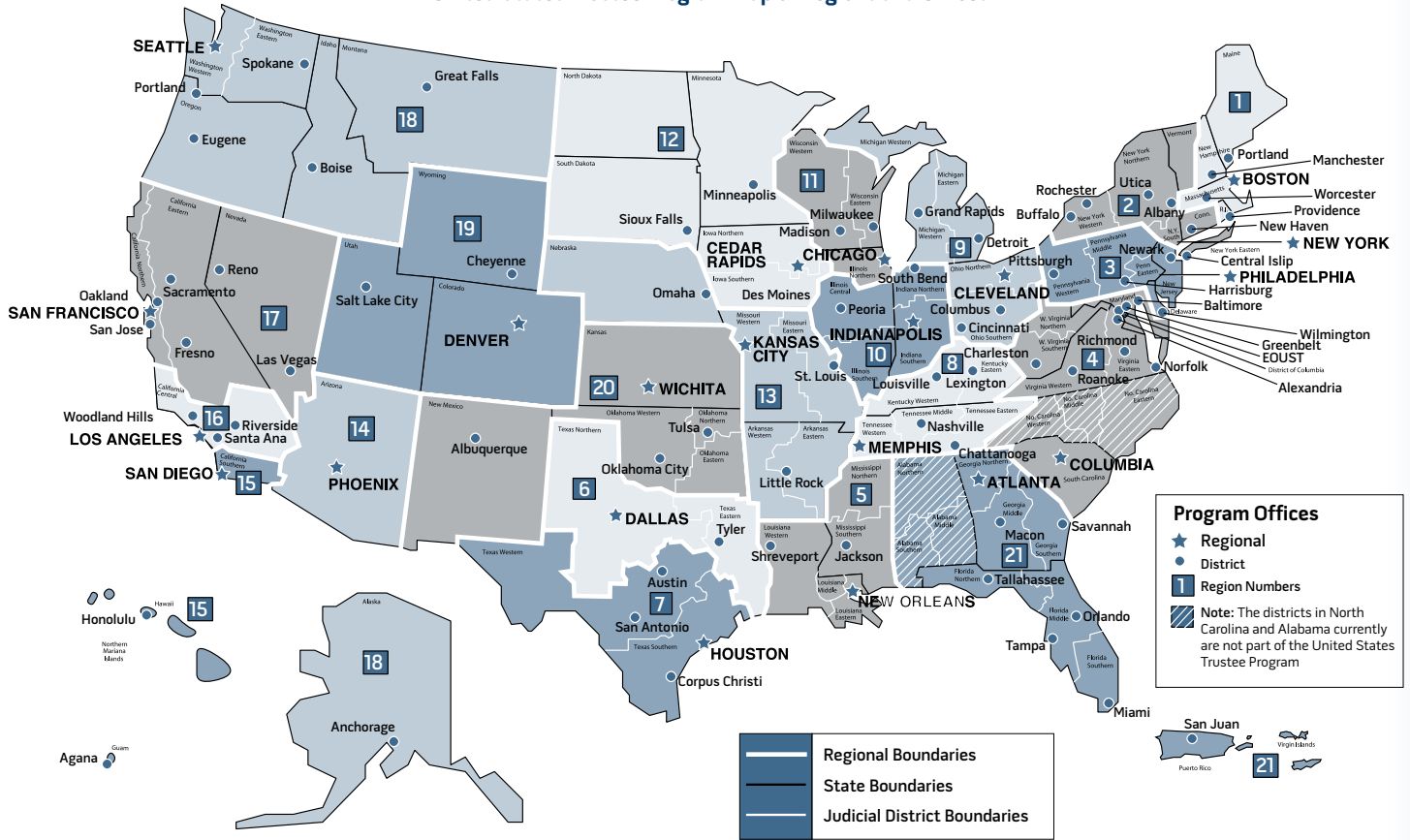
- The Assistant U.S. Trustee and a trial attorney from the Savannah office spoke at the annual bankruptcy seminar for secretaries and paralegals at Georgia Southern University in Statesboro, Georgia. Their presentation highlighted "red flags" for substantial abuse motions in Chapter 7 cases, accuracy in professional fee applications, and monthly operating report requirements for Chapter 11 debtors.



Chapter 10

Appendix

United States Trustee Program Map of Regions and Offices



U.S. Trustee Program Nationwide Office Locator

**Executive Office
for U.S. Trustees**
Washington, D.C.

Regional and Field Offices (by State)

Alaska
Anchorage

Arizona
Phoenix

Arkansas
Little Rock

California
Fresno
Los Angeles
Oakland
Riverside
Sacramento
San Diego
San Francisco
San Jose
Santa Ana
Woodland Hills

Colorado
Denver

Connecticut
New Haven

Delaware
Wilmington

Florida
Miami
Orlando
Tallahassee
Tampa

Georgia
Atlanta
Macon
Savannah

Hawaii
Honolulu

Idaho
Boise

Illinois
Chicago
Peoria

Indiana
Indianapolis
South Bend

Iowa
Cedar Rapids
Des Moines

Kansas
Wichita

Kentucky
Lexington
Louisville

Louisiana
New Orleans
Shreveport

Maine
Portland

Maryland
Baltimore
Greenbelt

Massachusetts
Boston
Worcester

Michigan
Detroit
Grand Rapids

Minnesota
Minneapolis

Mississippi
Jackson

Missouri
Kansas City
St. Louis

Montana
Great Falls

Nebraska
Omaha

Nevada
Las Vegas
Reno

New Hampshire
Manchester

New Jersey
Newark

New Mexico
Albuquerque

New York
Albany
Brooklyn
Buffalo
Central Islip
New York City
Rochester
Utica

Ohio
Cincinnati
Cleveland
Columbus

Oklahoma
Oklahoma City
Tulsa

Oregon
Eugene
Portland

Pennsylvania
Harrisburg
Philadelphia
Pittsburgh

Puerto Rico
San Juan

Rhode Island
Providence

South Carolina
Columbia

South Dakota
Sioux Falls

Tennessee
Chattanooga
Memphis
Nashville

Texas
Austin
Corpus Christi
Dallas
Houston
San Antonio
Tyler

Utah
Salt Lake City

Virginia
Alexandria
Norfolk
Richmond
Roanoke

Washington
Seattle
Spokane

West Virginia
Charleston

Wisconsin
Madison
Milwaukee

Wyoming
Cheyenne

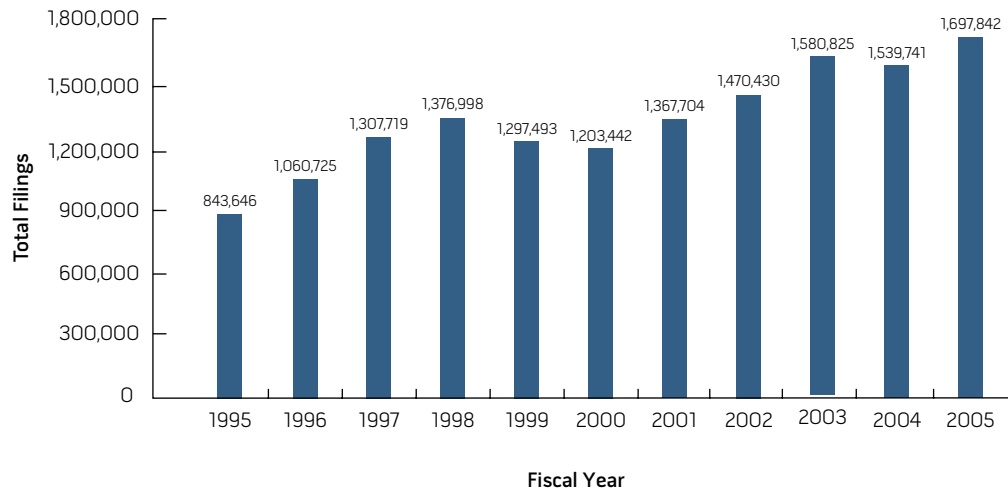
Please visit our web site
at www.usdoj.gov/ust
for office phone numbers
and addresses.

U.S. Trustee Program Civil Enforcement Actions—Fiscal Year 2005

Type of Action	Number of Inquiries and Formal Actions	Estimated Financial Impact
11 U.S.C. § 707(a) Dismissal for Cause	7,028	\$27,790,212
11 U.S.C. § 707(b) Dismissal for Substantial Abuse	26,679	\$283,682,519
11 U.S.C. § 727 Denial or Revocation of Discharge	3,947	\$219,083,630
11 U.S.C. § 110 Actions Against Bankruptcy Petition Preparers	1,553	\$2,360,735
11 U.S.C. § 329 Disgorgement of Attorneys' Fees	1,194	\$662,591
11 U.S.C. § 1104 Appointment of Trustee or Examiner	153	N/A
Actions for Attorney Misconduct	492	\$78,027
Total	41,046	\$533,657,714

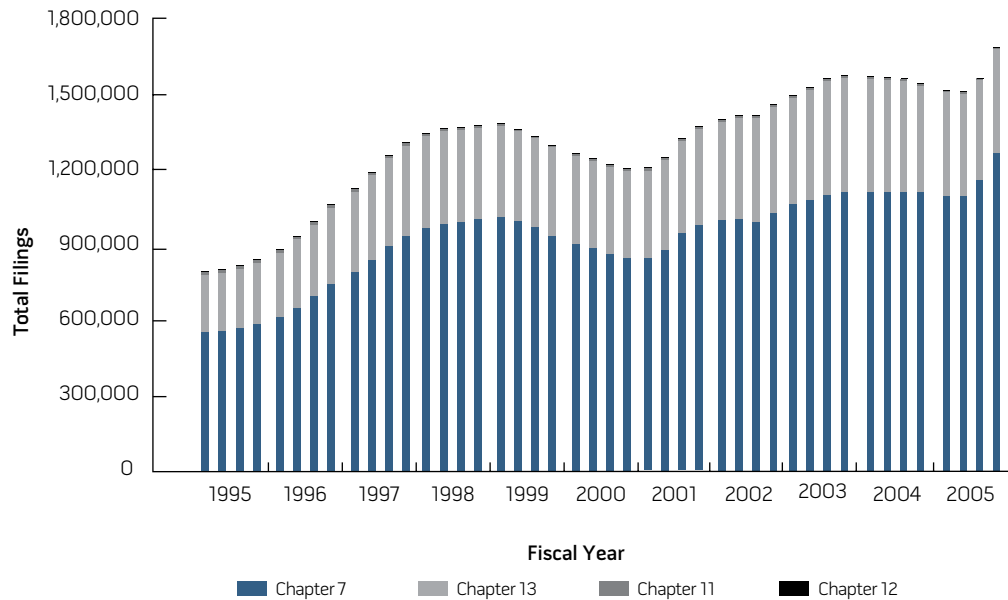
Total Bankruptcy Filings Nationwide

Fiscal Years 1995-2005 (Totals do not include Alabama & North Carolina)



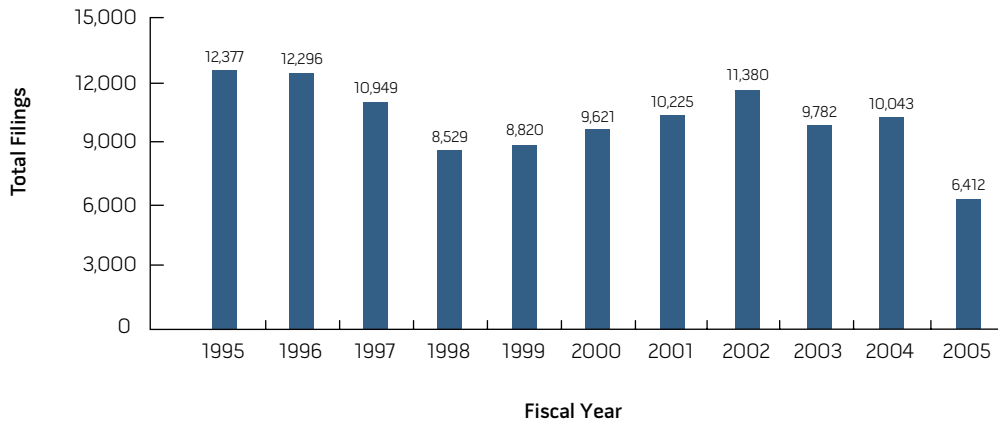
Total Bankruptcy Filings by Chapter

Fiscal Years 1995-2005 (Totals do not include Alabama & North Carolina)



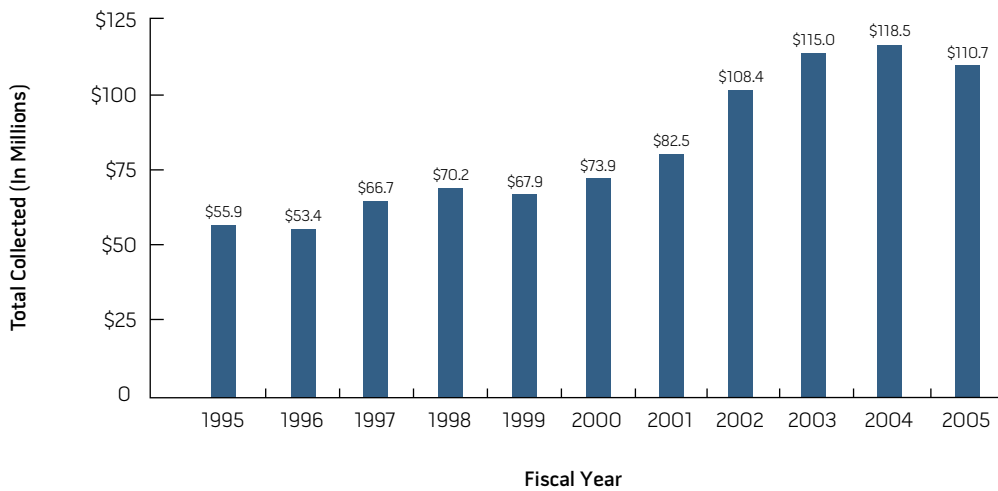
Chapter 11 Filings Nationwide

Fiscal Years 1995-2005 (Totals do not include Alabama & North Carolina)



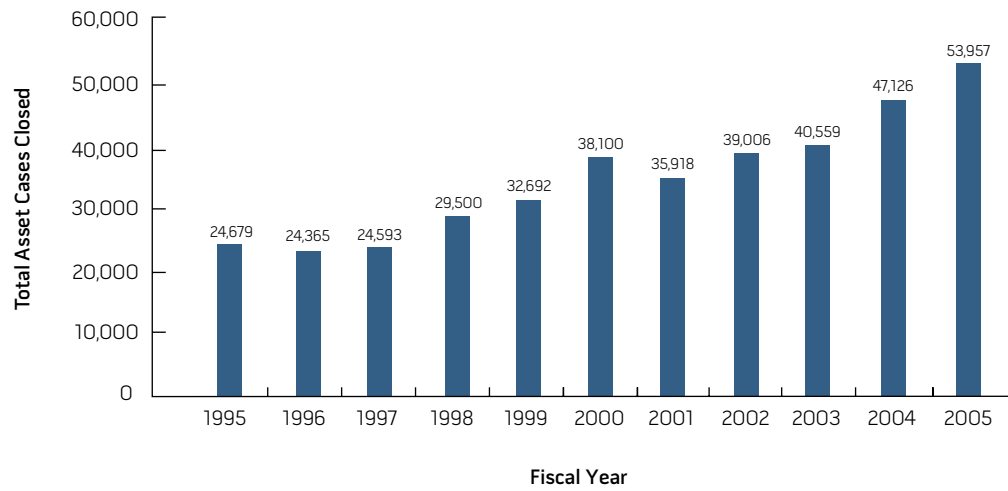
Chapter 11 Quarterly Fee Collections

Total Collected Fiscal Years 1995-2005 (Totals do not include Alabama & North Carolina)



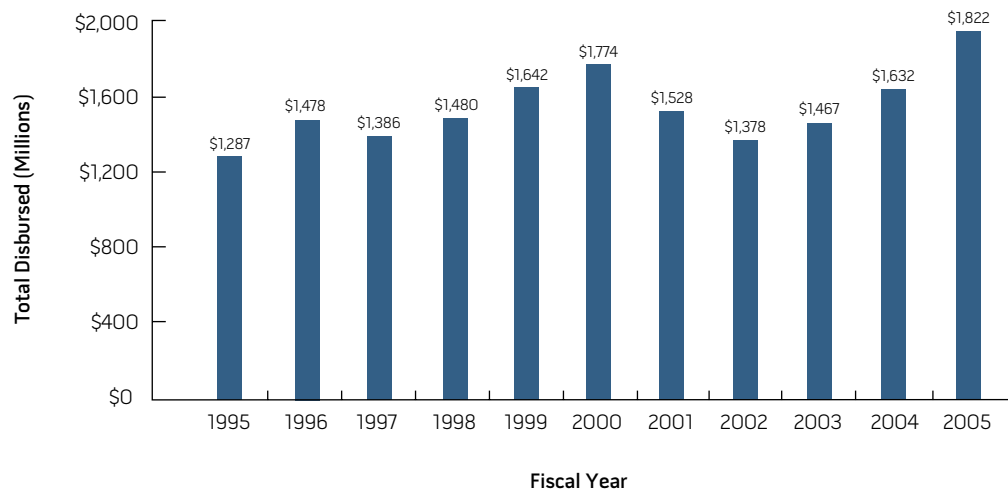
Chapter 7 Asset Cases Closed

Fiscal Years 1995-2005 (Totals do not include Alabama & North Carolina)



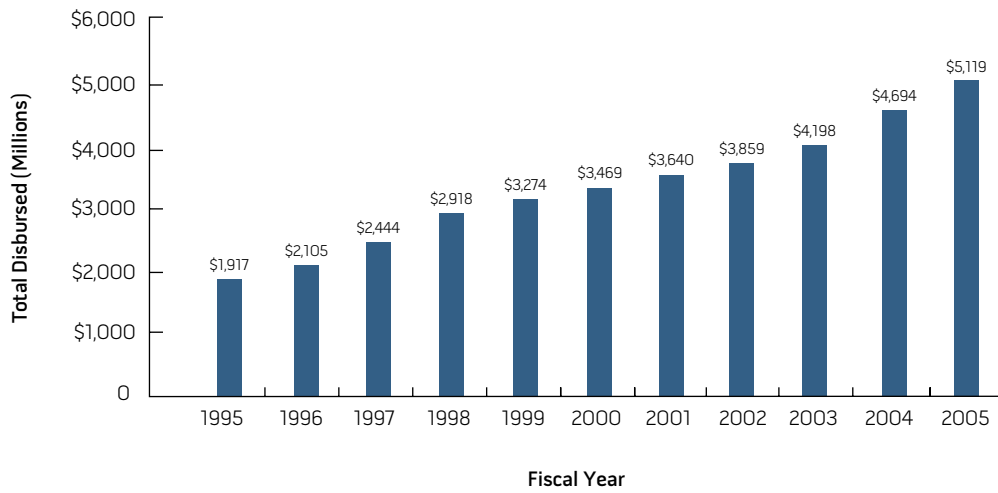
Chapter 7 Cases – Total Disbursements

Fiscal Years 1995-2005 (Totals do not include Alabama & North Carolina)

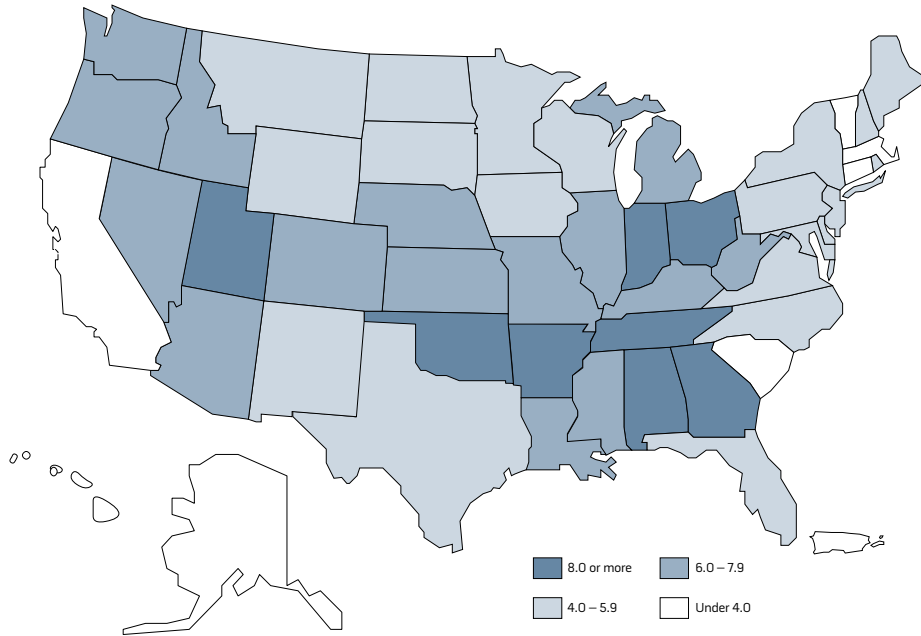


Chapter 13 Cases – Total Disbursements

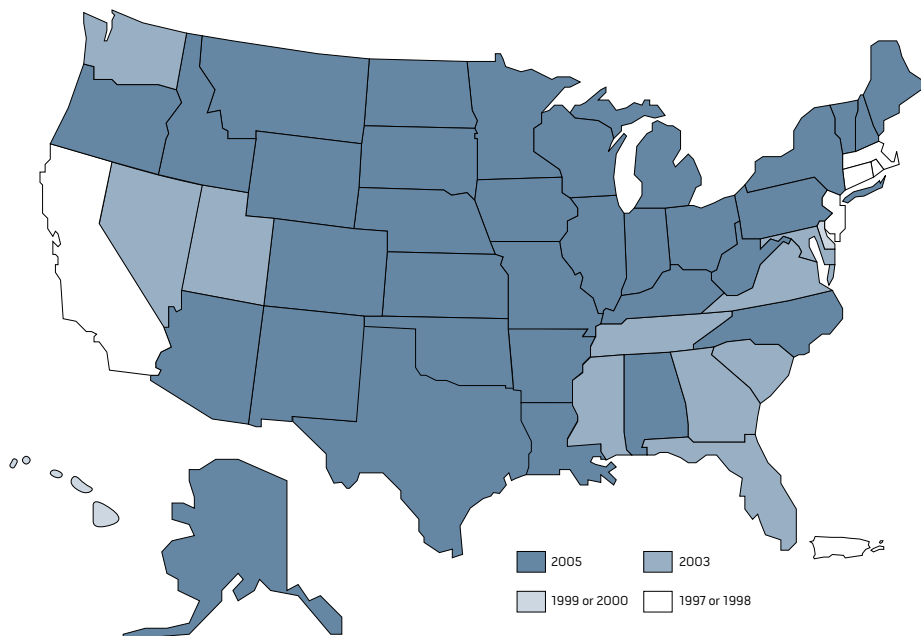
Fiscal Years 1995-2005 (Totals do not include Alabama & North Carolina)



Bankruptcy Filings Relative to Population
 (Cases Filed per 1,000 Population Fiscal Year 2005)



Peak Fiscal Years for Bankruptcy Filings



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 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.

