



UNITED STATES TRUSTEE PROGRAM
ANNUAL REPORT
FISCAL YEAR 2008

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MESSAGE FROM THE DIRECTOR

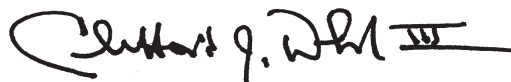
The United States Trustee Program (USTP or Program) is the component of the Department of Justice whose mission it is to promote the integrity and efficiency of the bankruptcy system for the benefit of all stakeholders—debtors, creditors, and the public. We are neutral enforcers of the Bankruptcy Code and, in the words of the legislative history establishing the Program, serve as the “watchdog” of the bankruptcy system. We oversee the administration of all bankruptcy cases—ranging from individual consumer cases to large corporation reorganizations—and possess broad administrative, regulatory, and litigation authorities.

At the core of the Program’s mission are our efforts to combat bankruptcy fraud and abuse. The Program investigates and takes action against debtors who evade their obligation to pay a portion of their debts out of disposable income, conceal their assets, file incomplete or inaccurate financial information, or otherwise fail to satisfy their obligations under the Bankruptcy Code. Likewise, the Program investigates and takes action against creditors, attorneys, non-attorney bankruptcy petition preparers, and others who may take advantage of vulnerable debtors in bankruptcy.

In Fiscal Year 2008, combating mortgage-related fraud and abuse continued as a top priority for the Program. In particular, the USTP was involved in significant litigation involving abusive conduct by national mortgage servicers that threatened current or former bankruptcy debtors’ attempts to save their homes. United States Trustees initiated scores of actions and inquiries, with at least 25 of those involving large national servicers. Though these cases typically are resource-intensive and raise complex issues of law, the Program is committed to identifying, investigating, and remedying this abusive conduct.

FY 2008 was also marked by numerous other accomplishments. The Program continued its close oversight of chapter 11 reorganizations, with a focus on objecting to bankruptcy professionals’ requests for excessive fees and to debtor corporations’ attempts to compensate their top officials contrary to Bankruptcy Code prohibitions. In addition, the Program made nearly 1,500 bankruptcy-related criminal referrals to United States Attorneys’ offices, and participated in the Department’s “Operation Malicious Mortgage,” a criminal takedown that targeted mortgage and real-estate related fraud. The Program also published for public comment two new rules, one creating new uniform final reports for cases in chapters 7, 12, and 13, and the other governing the application and approval process for pre-bankruptcy credit counseling agencies.

The Program’s hard-working, dedicated, and experienced professional staff made these many accomplishments possible. Please accept my invitation to learn more by reading our *Fiscal Year 2008 Annual Report of Significant Accomplishments*.



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

PROTECTING THE INTEGRITY OF THE BANKRUPTCY SYSTEM

The U.S. Trustee Program is the component of the Department of Justice that is responsible for overseeing the nation's bankruptcy system. The Program's mission is to promote integrity and efficiency in the bankruptcy system by enforcing bankruptcy laws; appointing and supervising private trustees; and ensuring that those involved in the process, including debtors, creditors, attorneys, and other professionals, fulfill their legal obligations. To carry out its mission, the Program has standing to participate in every bankruptcy case within its jurisdiction. (By statute, the Program does not have jurisdiction in Alabama and North Carolina.)

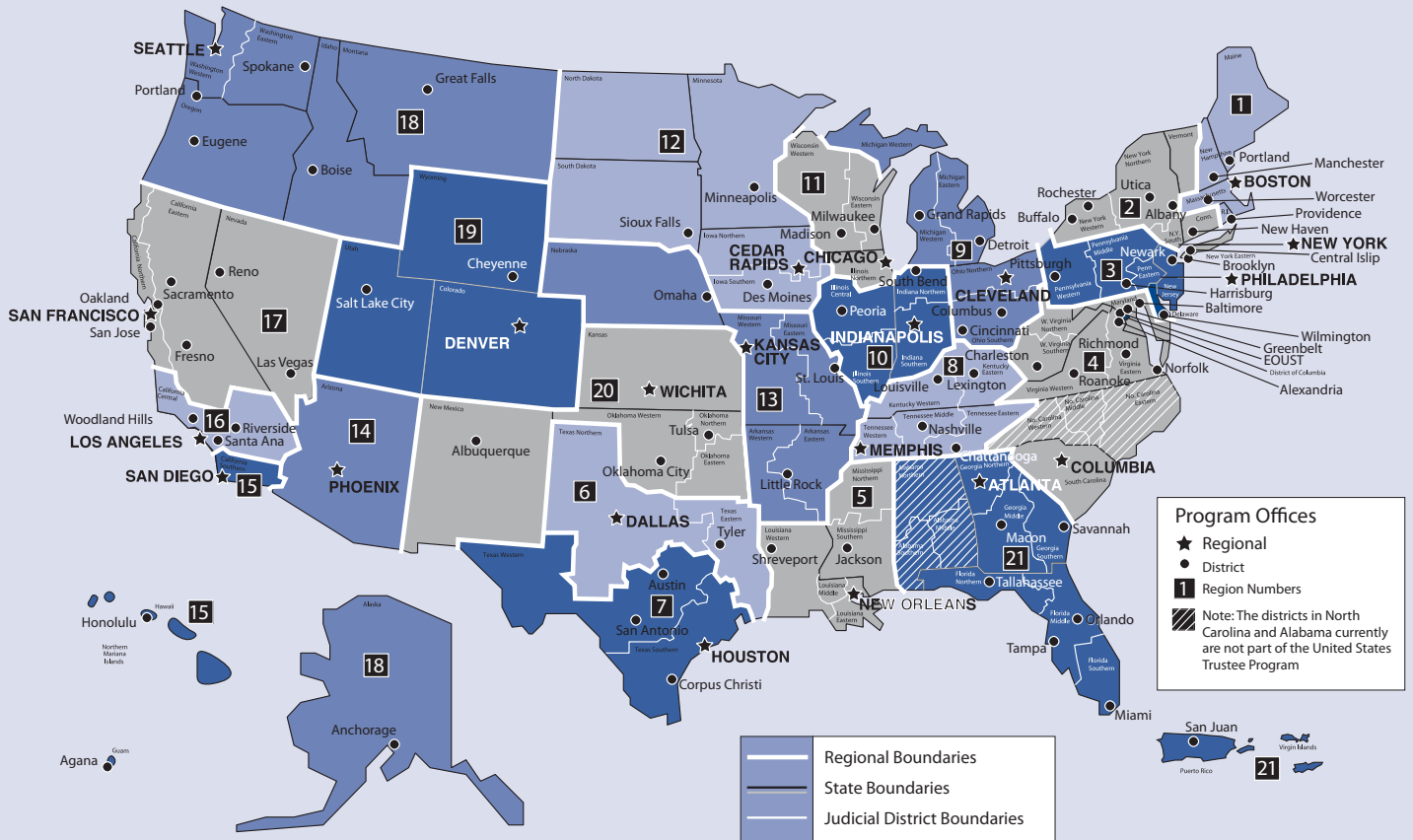
The Program's *Strategic Plan FY 2005-2010* reflects its commitment to operational excellence as a high-performing litigating component within the Department of Justice. The strategic plan is posted on the Program's Web site at http://www.usdoj.gov/ust/eo/ust_org/mission.htm.

ORGANIZATION AND ADMINISTRATION

The Program is managed by an Executive Office in Washington, D.C., which is led by a Director. Twenty-one regions are managed by United States Trustees, and 95 field offices are supervised by Assistant U.S. Trustees. The geographic jurisdiction of each region is determined by statute. At the conclusion of FY 2008, the Program employed approximately 1,250 attorneys, financial analysts, paralegals, and support staff. More than 90 percent of the Program's employees are located in its field offices.

The Program is funded through user fees paid by bankruptcy debtors. All revenues are deposited into the United States Trustee System Fund and remain available for expenditure, as specified in appropriations acts. Deposits to the U.S. Trustee System Fund consist of filing fees, chapter 11 quarterly fees, and interest on investments and other miscellaneous revenue. In FY 2008, Congress appropriated \$209.8 million for the Program.

U.S. 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.

BANKRUPTCY CODE

A bankruptcy case is a proceeding brought under federal law to discharge or reorganize the financial obligations of an individual or an entity. The federal Bankruptcy Code appears in title 11 of the United States Code. Most bankruptcy cases are filed under chapter 7, 11, or 13.

- ❖ Chapter 7 bankruptcy is a liquidation proceeding available to consumers and businesses. The assets of a debtor that are not exempt from creditors are collected and reduced to money, and the proceeds are distributed to creditors in accordance with a priority scheme established by the Bankruptcy Code. A consumer debtor receives a release from debt, except for certain debts that are excepted from discharge by the Bankruptcy Code.
- ❖ Chapter 11 provides a procedure by which an individual or a business can reorganize debts while continuing to operate. The vast majority of chapter 11 cases are filed by businesses. The debtor, often with participation from creditors, creates a plan of reorganization under which it proposes to repay part or all of its debts.
- ❖ Chapter 13 is used by individual consumers to reorganize their financial affairs under a repayment plan that must be completed within three to five years. To be eligible for chapter 13 relief, a consumer must have regular income and may not have more than a specified amount of debt.

BANKRUPTCY FILINGS

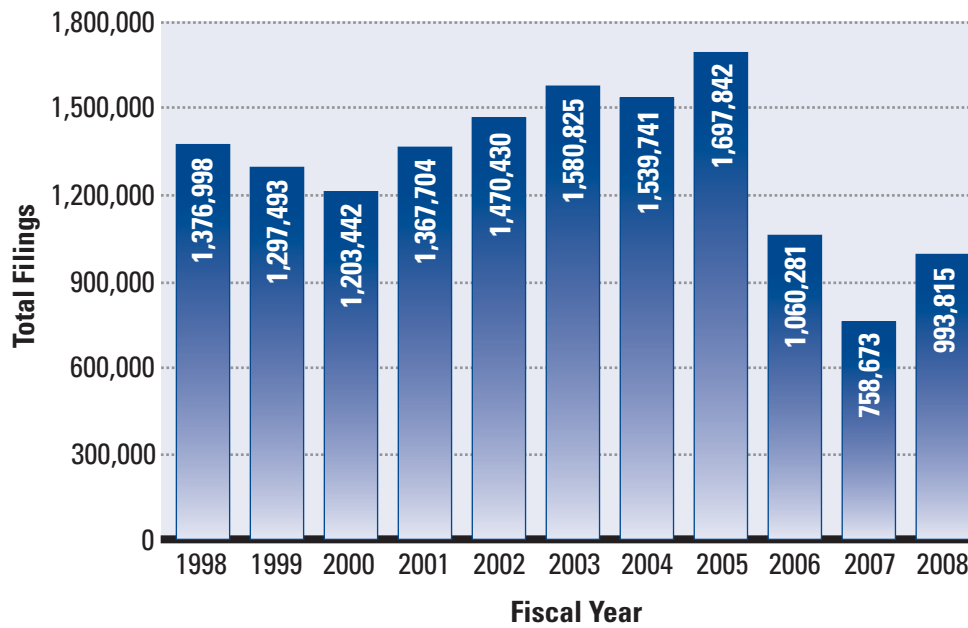
During FY 2008, 993,815 bankruptcy cases were filed in the 88 judicial districts covered by the Program.

Table 2.1. Bankruptcy Filings by Chapter

Bankruptcy Chapter	Filings in USTP Districts
All Chapters	993,815
Chapter 7	659,568
Chapter 11	8,457
Chapter 12 and Other Cases	364
Chapter 13	325,426

Source: Administrative Office of the U.S. Courts

**Figure 2.1. Total Bankruptcy Filings in USTP Districts
Fiscal Years 1998-2008**



Source: Administrative Office of the U.S. Courts

CHAPTER 3. CIVIL ENFORCEMENT

COMBATING FRAUD AND ABUSE

U.S. Trustees engage in civil enforcement activity to combat fraud and abuse by creditors, debtors, attorneys, non-attorney bankruptcy petition preparers, and others. Civil enforcement activity consists of formal and informal actions designed to address abuses. Formal actions before the bankruptcy court include various enforcement motions, such as motions to dismiss the case or to disgorge fees, as well as complaints seeking the denial or revocation of a discharge. Informal actions include written and verbal inquiries made to debtors and their counsel, creditors, and bankruptcy petition preparers regarding issues such as means test calculations or missing assets, documents, or information. The amounts of moneys reflected as not discharged represent funds potentially available for distribution to creditors due to formal actions or successful informal inquiries. The Program's primary civil enforcement activities are described in this chapter.

Throughout this chapter, in charts describing U.S. Trustee actions, the numbers of actions filed and actions decided during FY 2008 are not identical because some actions were filed before the reporting period, some actions were decided afterward, and some actions were withdrawn by the U.S. Trustee.

ABUSIVE CONDUCT BY MORTGAGE SERVICERS AND OTHER CREDITORS

U.S. Trustees investigate and bring enforcement actions against creditors and their counsel who engage in wrongful conduct that preys upon vulnerable debtors in bankruptcy and undermines public confidence and the integrity of the bankruptcy system. U.S. Trustees have made inquiries and undertaken formal investigations into abusive or deficient legal practices, false or inaccurate proofs of claim, violations of provisions that govern debtors' reaffirmation of dischargeable debts, and violations of the automatic stay or discharge injunction.

In recent years, U.S. Trustees have identified numerous instances of abusive conduct by national mortgage servicers that threaten current or former bankruptcy debtors' rights to save their homes, particularly in chapter 13 cases. The Program has responded by undertaking formal investigations and commencing multi-district litigation against some of the largest mortgage servicers and creditors in the industry. The systemic abuses by mortgage servicers in bankruptcy cases identified by U.S. Trustees, chapter 13 trustees, and bankruptcy courts include the filing of proofs of claim with excessive, unauthorized, or unnecessary fees and costs; the misapplication of payments intended to meet post-petition obligations, resulting in improper motions seeking relief from the automatic stay to permit foreclosure upon debtors' homes; the filing of pre-signed certifications attesting to missed payments in conjunction with relief from stay motions;

CHAPTER 3. CIVIL ENFORCEMENT

and the collection of undisclosed post-petition fees, resulting in the issuance of default notices and the start of foreclosure proceedings immediately following a debtor's successful cure of all pre-petition monetary defaults through a chapter 13 plan.

During FY 2008, Program attorneys reviewed hundreds of cases involving possible instances of systemic abuses by national mortgage servicers. U.S. Trustees initiated scores of actions against mortgage servicers—with at least 25 of those involving large national mortgage servicers—through the prosecution of complaints, orders to show cause, motions or applications for Bankruptcy Rule 2004 examinations, and other active case participation. In addition, the Program began working with the chapter 13 trustees to develop a standardized process for reviewing mortgage-related proofs of claim to ensure, among other things, that mortgage servicers properly disclose fees, costs, and other charges in their proofs of claim.

The Program's efforts to combat creditor abuse are not limited to the mortgage servicing industry. One notable example of these efforts is the Program's investigation of one of the nation's largest credit card issuers. The Program developed evidence that the automated system used by the credit card issuer to identify consumer debts previously discharged in bankruptcy had failed. As a result, the issuer filed approximately 5,600 improper proofs of claim in chapter 13 cases around the country seeking payment of previously discharged debt.

The Program reached an unprecedented settlement under which the credit card issuer agreed to hire an independent auditor selected by the court to conduct a historical and prospective audit of approximately 650,000 customer accounts. The issuer also agreed to repay all improperly collected moneys, estimated to be in excess of \$330,000, and to reimburse debtors and trustees all out-of-pocket fees and costs arising from their efforts to contest the improper proofs of claim. The settlement was approved by the Bankruptcy Court for the District of Massachusetts.

In its crackdown on creditor violations, the Program has faced a number of legal challenges to its standing to investigate abuses and bring remedial litigation. Notwithstanding these challenges, the Program remains vigilant and proactive in its efforts to identify, investigate, and remedy abuses by mortgage servicers and other creditors that arise in the bankruptcy system.

Table 3.1. Abusive Conduct by Creditors

Actions & Inquiries	FY 2008
Filed	130
Decided	79
Success Rate	93.7%
Inquiries	190

Source: Executive Office for U.S. Trustees

DENIAL OF DISCHARGE

U.S. Trustees may file complaints to deny or revoke a bankruptcy discharge under 11 U.S.C. § 727 if the debtor engaged in improper conduct such as concealing assets, withholding information on his/her bankruptcy papers, destroying property to hinder or defraud a creditor or trustee, knowingly making a false oath, or refusing to obey a court order. The debtor may voluntarily waive discharge under the same statutory section.

Table 3.2. Denial or Revocation of Discharge under § 727

Actions & Inquiries	FY 2008
Filed	1,810
Decided	1,515
Success Rate	99.2%
Inquiries	4,259
Amount Not Discharged	\$326,139,822

Source: Executive Office for U.S. Trustees

After a trial on the merits, the Bankruptcy Court for the Western District of Washington denied a debtor’s chapter 7 discharge of \$271,136 in unsecured debt. The U.S. Trustee’s Seattle office alleged the debtor concealed, among other things, a \$360,000 account receivable, a \$13,000 claim against her insurance company, \$6,000 in checking account funds, interests in two vehicles, and three thoroughbred horses. The debtor also failed to account for \$65,000 she admitted taking from trust accounts held by her escrow business.

DISMISSAL OF CASE

Dismissal for Abuse

U.S. Trustees may file motions to dismiss for abuse under section 707(b) if the application of the “means test” calculation shows that the debtor’s chapter 7 filing is presumed abusive and the debtor demonstrates no special circumstances to rebut that presumption. (In FY 2008, U.S. Trustees exercised their statutory authority to decline to file motions to dismiss in about 46 percent of presumed abuse cases because the debtor demonstrated that dismissal of the case was not appropriate due to job loss or other factors.) In addition, the U.S. Trustee may seek dismissal under section 707(b) if the case would be abusive considering the “totality of the circumstances of the debtor’s financial situation,” including the debtor’s ability to repay, or under a “bad faith” analysis.

Table 3.3. Dismissal for Abuse under § 707(b)

Actions & Inquiries	FY 2008
Filed	4,372
Decided	2,881
Success Rate	97.1%
Inquiries	31,480
Amount Not Discharged	\$374,854,825

Source: Executive Office for U.S. Trustees

CHAPTER 3. CIVIL ENFORCEMENT

Based on the ability to repay unsecured debt, the Bankruptcy Court for the Eastern District of Michigan granted a motion by the Detroit office to dismiss the case of a chapter 7 debtor whose household net income exceeded her household expenses by \$3,600 per month. The dismissal prevented the discharge of \$171,511 in unsecured debt.

Dismissal for Cause

U.S. Trustees may file motions to dismiss under section 707(a) for cause, such as the debtor's failure to file required documents.

DEBTOR IDENTIFICATION ISSUES

U.S. Trustees take action against debtors who intentionally use false names or Social Security numbers on bankruptcy documents. False filings may occur, for example, in an effort to avoid Bankruptcy Code restrictions on refiling bankruptcy within a particular time period, or to discharge debts that were falsely incurred using the identity of another individual. U.S. Trustees also assist, under certain circumstances, when an individual has a bankruptcy case falsely filed in his or her name. Assistance may include helping the individual obtain a court order that expunges the bankruptcy case from the court record or finds that the individual did not file the case.

Table 3.4. Debtor Identification

Actions & Inquiries	FY 2008
Filed	45
Decided	26
Success Rate	100.0%
Problems Identified	2,084
Petitions Amended or Form B21 (Statement of Social Security Number) Filed	1,691

Source: Executive Office for U.S. Trustees

The Bankruptcy Court for the Eastern District of California granted the Sacramento office's motion to assist an individual who had learned that his name was used in a bankruptcy filing by another person. The individual co-owned real property with a relative who lived in the property and was responsible for making the payments. The U.S. Trustee's investigation revealed that the relative fell behind in making payments and filed bankruptcy in the victim's name—without his knowledge—to prevent foreclosure. The court dismissed the case and made a specific finding that the victim had not filed bankruptcy. Certified copies of the order were provided to the individual so he could restore his credit rating.

IMPROPER CONDUCT BY ATTORNEYS

U.S. Trustees initiate actions against attorneys who engage in unethical conduct or provide substandard representation. Actions include asking courts to prohibit an attorney from appearing in bankruptcy cases, referring cases to state court disciplinary counsel or other regulatory bodies to pursue disciplinary proceedings, requesting reduction or disgorgement of attorneys' fees, and seeking sanctions. U.S. Trustees also enforce sections 526, 527, and 528 of the Bankruptcy Code, which govern "debt relief agencies." Among other things, those provisions require attorneys to make certain disclosures to clients who are consumer debtors.

Table 3.5. Attorney Fee Disgorgements under § 329

Actions & Inquiries	FY 2008
Filed	540
Decided	456
Success Rate	93.9%
Inquiries	1,103
Amount Disgorged	\$1,060,376

Source: Executive Office for U.S. Trustees

Table 3.6. Other Attorney Misconduct

Actions & Inquiries	FY 2008
Motions for Sanctions Filed	53
Decided	44
Success Rate	90.9%
Inquiries	232
Sanctions	\$33,855
Referrals to State Bar	19
Disciplinary Rulings Issued	2

Source: Executive Office for U.S. Trustees

CHAPTER 3. CIVIL ENFORCEMENT

The Bankruptcy Court for the District of Colorado ordered two attorneys to disgorge approximately \$60,000 in compensation paid to their Southern California-based law firm by clients in Colorado, and sanctioned them \$2,000. The Denver office intervened in the clients' bankruptcy cases after several judges issued orders to show cause regarding the activities of one of the attorneys. These activities had resulted in the dismissal of some clients' cases for failure to comply with statutory or court requirements, and had delayed the confirmation of other clients' chapter 13 reorganization plans. The law firm solicited clients via the Internet and mail flyers. Communications with debtors, including the transmission of financial information and pleadings, were primarily via the Internet and email. Many of the debtors did not meet with an attorney before their case was filed, did not know if they were dealing with an attorney or a paralegal, were unaware of additional fees to be paid through their chapter 13 plan, and did not know why the law firm filed their case under a particular chapter. Further, many debtors were unaware that a different local attorney, whom they had never met, would attend the section 341 meeting of creditors purporting to be their counsel.

VIOLATIONS BY BANKRUPTCY PETITION PREPARERS

U.S. Trustees bring actions under 11 U.S.C. § 110 against non-attorney bankruptcy petition preparers who violate the Bankruptcy Code by, for example, falsely advertising "legal" services, charging excessive fees, collecting clients' payments for court filing fees, or engaging in unfair, deceptive, or fraudulent conduct.

Table 3.7. Bankruptcy Petition Preparers under § 110

Actions & Inquiries	FY 2008
Filed	167
Decided	158
Success Rate	99.4%
Inquiries	597
Fines Imposed	\$667,947
Fees Recovered	\$159,787
Injunctions	74

Source: Executive Office for U.S. Trustees

Ruling for the Portland office, the Bankruptcy Court for the District of Oregon entered a default judgment against a bankruptcy petition preparer, ordering payment of \$27,000 in fines to the U.S. Trustee. A stipulated judgment entered in 2006 enjoined

the bankruptcy petition preparer from preparing bankruptcy documents in the District of Oregon. The bankruptcy petition preparer violated that injunction and engaged in numerous additional violations by giving legal advice to debtors, failing to include required information on one or more documents filed with the court, collecting court fees from debtors and paying the court filing fee with a personal check written on the bankruptcy petition preparer's account for which there were insufficient funds, failing to accurately disclose fees received from the debtors, and using the terms "legal" and "paralegal" in advertisements.

DEBTOR AUDITS

The BAPCPA authorizes the Program to contract with independent firms to perform audits of consumer chapter 7 and chapter 13 cases as designated by the Program. The audits are designed to provide baseline data to gauge the magnitude of fraud, abuse, and error in the bankruptcy system; to assist the Program in identifying cases of fraud, abuse, and error; and to enhance deterrence. Pursuant to the BAPCPA, the Program designates for "random audit" a specified uniform percentage of consumer bankruptcy cases within each judicial district, and designates for "exception audit" additional cases in which the debtor's income or expenses deviate from a statistical norm of the district in which the case is filed.

By statute, debtors are required to cooperate with the audit firms, and a debtor's discharge may be revoked for failure to adequately explain either a lack of cooperation with the audit firm or a material misstatement reported by the audit firm. In FY 2008, the Program adjusted the criteria used by audit firms for identifying material misstatements and refined the income and expenditure thresholds for designating cases for exception audits.

For budgetary reasons, in January 2008 the Program temporarily suspended its designation of cases subject to audit. The Program resumed its designation of cases subject to audit effective May 12, 2008. For the remainder of the fiscal year, random audits were conducted in one out of every 1,000 cases, rather than one out of every 250 cases, filed in a judicial district.

Annually, the Attorney General is required to publicly report the results of the audits, including the number of material misstatements of income or expenditures by judicial district. More information regarding debtor audits can be found in the report, which is posted on the Program's Web site at www.usdoj.gov/ust/eo/public_affairs/reports_studies/index.htm.

CHAPTER 4. CRIMINAL ENFORCEMENT

PURSuing BANKRUPTCY-RELATED CRIMES

U.S. Trustees work in partnership with law enforcement agencies to pursue bankruptcy-related crimes. Federal law requires that U.S. Trustees refer suspected criminal activity to the U.S. Attorneys' offices for prosecution. Program staff identify instances of suspected criminal behavior and assist in prosecuting criminal cases by, for example, serving on the prosecution team, providing technical assistance on bankruptcy matters, and testifying as expert witnesses.

The Program's criminal enforcement activities are coordinated by its Criminal Enforcement Unit (CrEU), which provides extensive criminal enforcement training to Program staff, private trustees, and federal law enforcement personnel. In FY 2008, four experienced career prosecutors within the CrEU, plus 25 attorneys in field offices across the country, were designated as Special Assistant U.S. Attorneys available to assist U.S. Attorneys' offices in the prosecution of bankruptcy crimes. In addition, the Program participates in working groups in more than 50 districts, including bankruptcy fraud working groups, mortgage fraud working groups, and other specialized task forces. Staff work closely with the FBI, the Internal Revenue Service-Criminal Investigation Division, the Office of Inspector General of the Department of Housing and Urban Development, and other law enforcement agencies.

During FY 2008, the Program participated in an FBI initiative called "Operation Malicious Mortgage," which targeted mortgage and real estate-related fraud. Operation Malicious Mortgage involved the arrest, indictment, or conviction of 406 criminal defendants in 144 separate prosecutions in 50 judicial districts, and it included cases referred by the Program.

The Program reviews all citizen reports of suspected criminal bankruptcy fraud and maintains a Web-based email "hotline" for reporting suspected bankruptcy fraud, at www.usdoj.gov/ust/eo/fraud/index.htm.

CRIMINAL REFERRALS

The Program made 1,471 bankruptcy and bankruptcy-related criminal referrals in FY 2008. Each referral may contain multiple allegations. The most common allegation in referrals made during FY 2008 involved false oaths or statements, followed by concealment of assets, bankruptcy fraud schemes, tax fraud, and identity theft or use of false/multiple Social Security numbers.

CHAPTER 4. CRIMINAL ENFORCEMENT

The Program's annual report on criminal referrals, outcomes of referrals, and efforts to prevent bankruptcy fraud and abuse is posted on the Program's Web site at www.usdoj.gov/ust/eo/public_affairs/reports_studies/index.htm.

Bankruptcy-related crimes encompass a wide range of illegal conduct by debtors and by those who exploit debtors. The following are examples of criminal matters occurring in FY 2008.

Based on a referral by the Wichita office, the operator of a "foreclosure rescue" scheme and an associate were charged with conspiracy, aggravated identity theft, and mail fraud. After receiving a tip regarding a suspicious bankruptcy case filed in the District of Kansas, the U.S. Trustee investigated and discovered 11 similar cases. Further investigation revealed a nationwide foreclosure rescue scheme that targeted homeowners in financial distress. The scheme operator solicited homeowners whose homes were facing foreclosure by promising that the homeowners would not have to make mortgage payments for two years. In each case, the homeowner was directed to transfer a partial interest in his or her home to a company that was actually fictitious. The scheme operator filed a bankruptcy case in the name of the fictitious company to halt the foreclosure. When the case was dismissed for failure to file required bankruptcy documents, the homeowner was directed to transfer another partial interest in the home to another fictitious company, and the process began again. Homeowners paid the scheme operator monthly fees ranging from \$499 to \$2,000. When they stopped paying him, their homes went into foreclosure. Both the scheme operator and the associate, who prepared the fraudulent bankruptcy petitions, were ultimately convicted on all counts after a two-week trial at which a U.S. Trustee employee testified. The U.S. Trustee coordinated efforts with the U.S. Attorney's office, the Federal Bureau of Investigation, the U.S. Postal Inspection Service, and the Social Security Administration's Office of Inspector General in this matter.

A chapter 11 debtor was sentenced in the Eastern District of Virginia to 70 months in prison and three years supervised release, and ordered to pay almost \$4 million in restitution, after pleading guilty to mail fraud and bankruptcy fraud. The debtor operated a scheme in which he repeatedly conveyed two properties he owned, and caused mortgage payoff checks to be diverted to mail drops he opened. He negotiated the payoff checks and used the funds for personal and business expenses. He provided false certificates of satisfaction to title companies showing the mortgagees had been paid, which allowed him to continue the scheme. During his chapter 11 bankruptcy case he falsely testified, at a hearing on the U.S. Trustee's motion to dismiss or convert his case, that he would not sell any of his property without bankruptcy court permission. In actuality, one of his properties had gone to settlement a few days earlier.

CHAPTER 4. CRIMINAL ENFORCEMENT

The U.S. Trustee's Alexandria office referred the matter to the U.S. Attorney, and the Alexandria Assistant U.S. Trustee served as a Special Assistant U.S. Attorney in the case.

A jury convicted a chapter 7 debtor in the District of Arizona on six counts of false declaration in bankruptcy, one count of bankruptcy fraud, and 26 counts of money laundering. The debtor engaged in the private practice of law specializing in taxation, asset protection planning, estate planning, and bankruptcy. In the name of his solely owned corporation, he entered into a \$1.2 million lease/purchase contract for a house and made a \$75,000 down payment. Four months later, he filed bankruptcy without disclosing his ownership of the corporation, corporate bank accounts, a one-third interest in his deceased mother's estate, and two personal bank accounts. He was ultimately sentenced to 13 months in prison and three years of supervised release, penalized \$10,800, and suspended from the practice of law. The U.S. Trustee's Phoenix office referred the matter, investigated, and assisted during the trial, and two employees of that office testified at trial.

CHAPTER 5. LITIGATION IN CHAPTER 11 BUSINESS REORGANIZATIONS

U.S. TRUSTEES' DUTIES

U.S. Trustees perform many duties in chapter 11 cases to help ensure that cases move as expeditiously as possible, parties comply with Bankruptcy Code requirements, and the interests of all parties, as well as the public interest, are taken into account. Some of the U.S. Trustee's primary responsibilities are described in this chapter.

Throughout this chapter, in charts describing actions by the U.S. Trustee, the numbers of actions filed and actions decided during FY 2008 are not identical because some actions were filed before the reporting period, some actions were decided afterward, and some actions were withdrawn by the U.S. Trustee.

APPOINTMENT OF TRUSTEES AND EXAMINERS

U.S. Trustees seek appointment of a chapter 11 trustee, upon court order, if certain statutory conditions are met. The U.S. Trustee may move for the appointment of a trustee, and the court shall order that appointment, if cause exists or if the appointment is in the best interest of creditors, equity holders, and others with an interest in the estate. "Cause" includes fraud, dishonesty, incompetence, or gross mismanagement of the affairs of the debtor by current management. In addition, the Bankruptcy Code requires the U.S. Trustee to seek a trustee's appointment based upon reasonable grounds to suspect that the debtor's board or top management participated in actual fraud, dishonesty, or criminal conduct in the management of the debtor or its public financial reporting.

Alternatively, U.S. Trustees may seek the appointment of an examiner, upon court order, to conduct an investigation of a debtor as appropriate, including an investigation of any allegations of fraud, dishonesty, incompetence, misconduct, mismanagement, or irregularity in the management of the debtor's affairs.

Table 5.1. Appointment of Trustee or Examiner under § 1104

Actions & Inquiries	FY 2008
Filed	122
Decided	117
Success Rate	93.2%
Inquiries	57

Source: Executive Office for U.S. Trustees

CHAPTER 5. LITIGATION IN CHAPTER 11 BUSINESS REORGANIZATIONS

Granting a motion by the Las Vegas office, the Bankruptcy Court for the District of Nevada directed the appointment of a trustee in the chapter 11 case of a home builder. At the section 341 meeting of creditors, the builder's managing member asserted his Fifth Amendment right to avoid self-incrimination and declined to answer questions about the pre-bankruptcy disposition of approximately \$4.3 million in deposits paid by prospective condominium purchasers.

EMPLOYMENT OF PROFESSIONALS

U.S. Trustees monitor and, when appropriate, object to the employment of professionals such as attorneys, accountants, turnaround specialists, and others who are paid from bankruptcy estate funds. U.S. Trustees review these professionals' applications for employment, to ensure compliance with Bankruptcy Code prohibitions against conflicts of interest.

Table 5.2. Employment of Professionals under §§ 327 & 1103

Actions & Inquiries	FY 2008
Filed	660
Decided	533
Success Rate	91.7%
Inquiries	725

Source: Executive Office for U.S. Trustees

The Bankruptcy Court for the District of Delaware denied a debtor company's application to retain a law firm that failed to disclose that its fees were guaranteed by the debtor's majority shareholder. The U.S. Trustee's Wilmington office objected to the retention, pointing out that an affiliate of the majority shareholder proposed to purchase the debtor's assets, the law firm possessed a claim for pre-petition attorneys' fees that it had not waived, and the fee guarantee created a conflict of interest.

COMPENSATION OF BANKRUPTCY PROFESSIONALS

U.S. Trustees monitor and, when appropriate, object to payment of the fees and expenses of professionals such as attorneys, accountants, turnaround specialists, and others who are compensated from bankruptcy estate funds. The Bankruptcy Code permits reasonable compensation for actual, necessary services rendered by professionals, as well as reimbursement for actual, necessary expenses.

CHAPTER 5. LITIGATION IN CHAPTER 11 BUSINESS REORGANIZATIONS

Table 5.3. Professional Fee Requests under § 330

Actions & Inquiries	FY 2008
Filed	546
Decided	416
Success Rate	93.0%
Inquiries	702
Fees Reduced/Withdrawn	\$66,073,672

Source: Executive Office for U.S. Trustees

The Bankruptcy Court for the Southern District of New York sustained the New York office's objection to a request for a \$9 million transaction fee. The request was made by the firm serving as financial advisor to an official committee of equity holders. At issue was the interpretation of the financial advisor's engagement letter with the equity committee. The financial advisor calculated its transaction fee based on theoretical distributions to equity from a government restitution fund, which it argued were distributions "under the [Reorganization] Plan." The court disagreed, adopting the U.S. Trustee's position that the language of the engagement letter was unambiguous, "under the Plan" did not include the restitution fund distributions, the transaction fee must be calculated based on actual disbursements to equity on the effective date of the plan, and the financial advisor was not entitled to a transaction fee because there were no distributions to equity on the effective date.

COMPENSATION OF DEBTOR'S MANAGEMENT

Debtor companies are restricted in their ability to pay bonuses to senior executives through "key employee retention plans" (KERPs). Where appropriate, U.S. Trustees file objections to KERPs or, in the alternative, may persuade debtors to modify their compensation schemes to avoid objections.

In the liquidating chapter 11 case of a jewelry retailer, the Wilmington office objected to an incentive and retention plan that proposed to pay more than \$1 million to the debtor's insiders and employees. The U.S. Trustee prevailed despite the fact that all of the objecting creditors withdrew their objections before the hearing. The Bankruptcy Court for the District of Delaware agreed with the U.S. Trustee that the plan was a "management slush fund," and ruled that the "incentive" portions of the plan related to actions that were already substantially complete or a regular part of the managers' job description. As a result, the bankruptcy court held the incentive and retention plan could not be approved.

CHAPTER 5. LITIGATION IN CHAPTER 11 BUSINESS REORGANIZATIONS

In the chapter 11 case of a wholesale mortgage lender, the Woodland Hills office objected to the debtor's attempt to pay its founder and chief executive officer a \$150,000 "performance bonus" during the case. The debtor sought to pay this bonus at a time when it was liquidating and shortly after it had terminated nearly all of its 800-member workforce. In addition, the chief executive officer had not been an active participant in the debtor's liquidation, and the proposed bonus did not require him to perform any actual work for the debtor. Sustaining the U.S. Trustee's objection, the Bankruptcy Court for the Central District of California denied the proposed bonus as well as a related application by the debtor to employ an executive compensation consultant.

MOTIONS TO CONVERT OR DISMISS

When there appears to be little likelihood of a successful reorganization or the debtor fails to exercise its fiduciary obligations and/or comply with the law, U.S. Trustees seek to have a chapter 11 case converted to a chapter 7 liquidation case or dismissed entirely.

Table 5.4. Case Conversion or Dismissal under § 1112

Actions & Inquiries	FY 2008
Filed	2,766
Decided	2,267
Success Rate	98.2%
Inquiries	1,009

Source: Executive Office for U.S. Trustees

OBJECTIONS TO DISCLOSURE STATEMENTS AND TO PLAN CONFIRMATION

U.S. Trustees object to disclosure statements filed by parties to a case if the disclosure statements do not provide adequate information and meet statutory requirements.

Table 5.5. Disclosure Statements under § 1125

Actions & Inquiries	FY 2008
Filed	362
Decided	268
Success Rate	98.9%
Inquiries	260

Source: Executive Office for U.S. Trustees

CHAPTER 5. LITIGATION IN CHAPTER 11 BUSINESS REORGANIZATIONS

U.S. Trustees also object to confirmation of proposed plans of reorganization if the proposed plans do not meet statutory requirements.

Table 5.6. Plan Confirmations under § 1129

Actions & Inquiries	FY 2008
Filed	235
Decided	153
Success Rate	93.5%
Inquiries	123

Source: Executive Office for U.S. Trustees

The Bankruptcy Court for the Northern District of Illinois denied confirmation of the chapter 11 reorganization plan of a shell corporation that listed no assets and \$3.2 million in debt purportedly owed to an entity that was controlled by its principal. The Chicago office objected to the plan, in part because the plan's only purpose was to avoid taxes by using the shell corporation's net operating loss to shield taxable income that the principal derived from other entities. The debtor argued, among other things, that the plan had purposes other than tax avoidance and that the U.S. Trustee lacked standing to object. In a written opinion, the court rejected the debtor's arguments, noting that the U.S. Trustee's role in protecting the integrity of the bankruptcy system "becomes more important, not less, ... where the relationship between a debtor and its creditors is not adversarial."

CHAPTER 6. TRUSTEE OVERSIGHT

PRIVATE TRUSTEES

The Program appoints and supervises 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.

Chapter 7 trustees are often referred to as “panel trustees” because they are appointed by the U.S. Trustee to a panel in each judicial district, for a one-year renewable term. Once the trustees are appointed to the panel, chapter 7 cases generally are assigned to each trustee through a blind rotation process. The chapter 7 trustee collects the debtor’s assets that are not exempt from creditors, liquidates the assets, and distributes the proceeds to creditors.

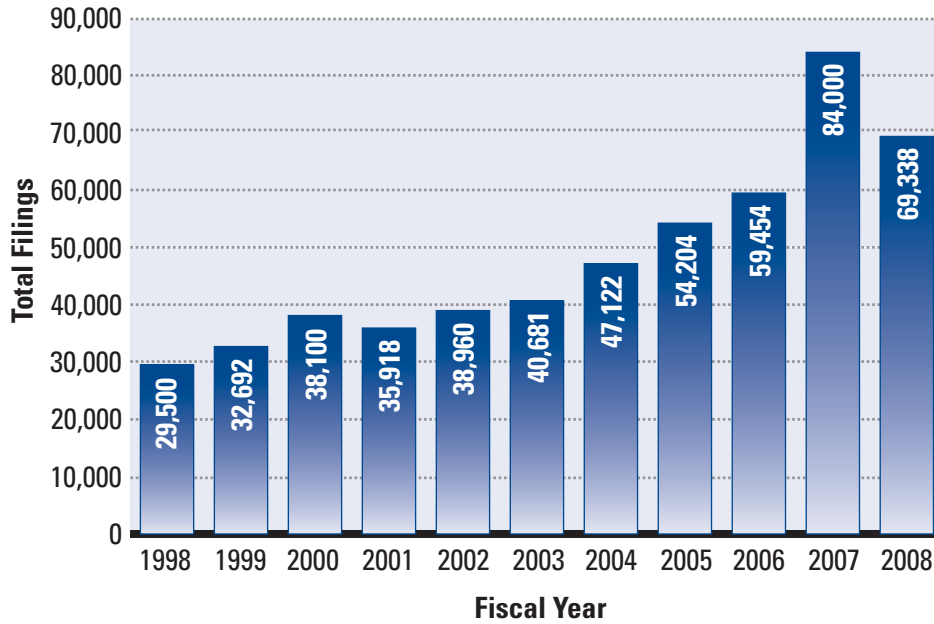
Chapter 12 and chapter 13 trustees are called “standing trustees” because, pursuant to statute, they have a standing appointment from the U.S. Trustee to administer cases within a particular geographic area. Standing trustees evaluate the financial affairs of the debtor, make recommendations to the court regarding confirmation of the debtor’s repayment plan, and administer the court-approved plan by collecting payments from the debtor and disbursing the funds to creditors.

The Program provides policy guidance to the trustees concerning their duties to debtors, creditors, other parties in interest, and the U.S. Trustee; 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.

CASE ADMINISTRATION

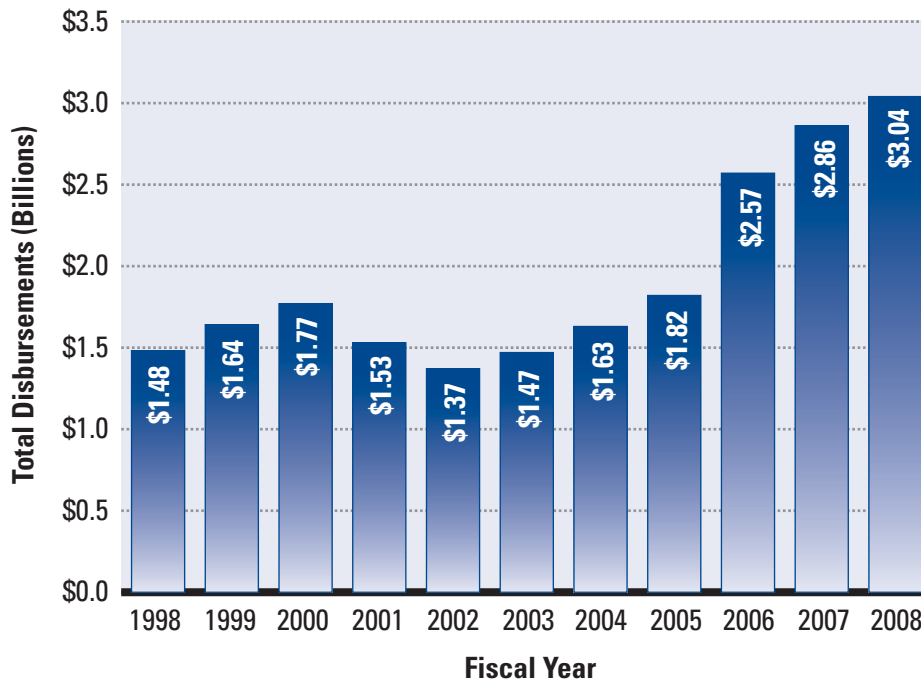
The Program oversees the activities of approximately 1,330 private trustees who distributed more than \$8 billion in FY 2008. Chapter 7 trustees administered over 69,000 asset cases, which generated more than \$3 billion in funds; chapter 12 and chapter 13 trustees administered almost \$33 million and \$5 billion in assets, respectively.

**Figure 6.1. Chapter 7 Asset Cases Closed
Fiscal Years 1998-2008**



Source: Executive Office for U.S. Trustees

**Figure 6.2. Chapter 7 Cases — Total Disbursements
Fiscal Years 1998-2008**

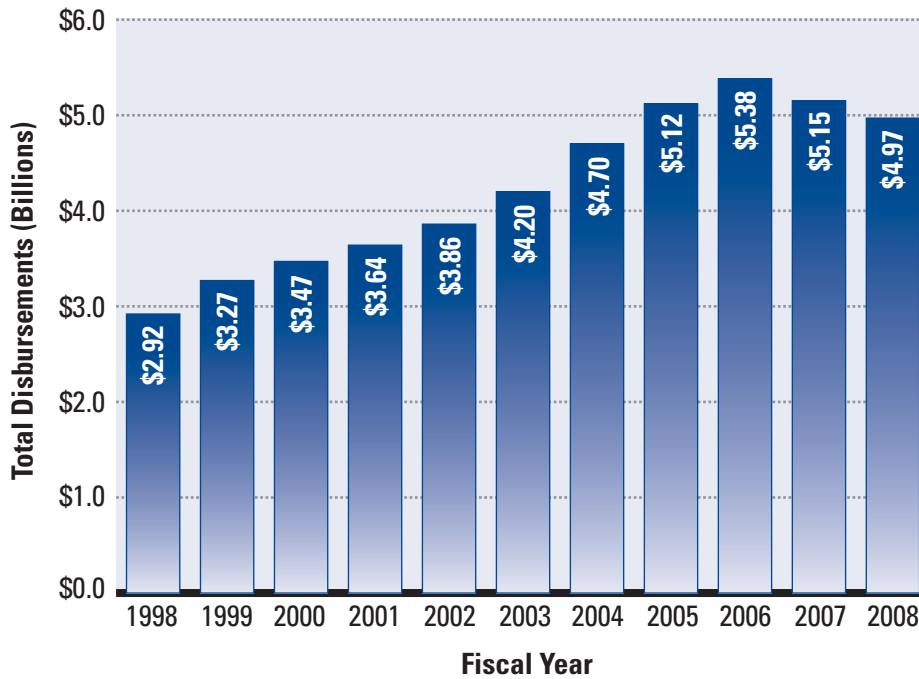


Source: Executive Office for U.S. Trustees

In chapter 7 cases, Program staff review trustees’ final reports before funds are distributed to creditors, and review final accounts after distribution is complete. Program staff reviewed approximately 138,000 such reports in FY 2008. In addition, chapter 7 trustees receive performance reviews at least every other year. These reviews focus on numerous facets of a trustee’s work, including the conduct of section 341 meetings of creditors, the pursuit of assets, case administration, and the supervision of professionals. In FY 2008, Program staff prepared approximately 550 performance reviews of chapter 7 trustees.

In chapter 13 cases, Program staff review monthly reports, as well as specialized reports received from trustees, to determine if cases in the aggregate are being administered efficiently and effectively. Program staff also may periodically visit trustees to review procedures in more detail. Chapter 13 trustees receive performance evaluations every year, and chapter 12 trustees receive performance evaluations every other year. These reviews focus on matters such as the conduct of section 341 meetings of creditors, case administration, public complaints, and reporting of information. Program staff prepared approximately 226 performance reviews of chapter 12 and chapter 13 trustees in FY 2008.

**Figure 6.3. Chapter 13 Cases — Total Disbursements
Fiscal Years 1998-2008**



Source: Executive Office for U.S. Trustees

FINANCIAL OPERATIONS

Chapter 7 trustee operations are reviewed by Program staff and independent certified public accountants on a four-year cycle. During FY 2008, more than 270 audits and field reviews were conducted. In addition, each trustee submits an annual report covering all open asset cases. The annual reports are reviewed by Program staff to assure that cases are progressing toward closure and that the trustee has properly accounted for bankruptcy estate funds. Over 1,100 annual reports were reviewed during FY 2008.

Independent audit firms audit chapter 13 trustees every year; chapter 12 trustees are reviewed by Program staff or independent audit firms every three years. During FY 2008, 202 chapter 12 and chapter 13 trustees were audited. Program staff review the audit reports and work with the trustees to resolve any identified deficiencies. They also review the monthly reports in which trustees describe financial activity within the trust operation.

FEDERAL RULEMAKING

The BAPCPA mandated the development of uniform final report forms to be used by trustees when closing cases under chapters 7, 12, and 13. The law listed the information required to be included in all forms. After extensive consultation with bankruptcy trustees and others in the bankruptcy community, in February 2008 the Program published the proposed rule setting forth the procedures for completing the uniform final report forms.

Comments to the proposed rule were reviewed and incorporated as appropriate into the uniform final report forms. A number of comments concerned the resources required to complete the proposed report of no distribution. The Program worked with the Administrative Office of the U.S. Courts to address those concerns. This effort led to the development of a virtual text entry with significant data provided electronically from the debtor's schedules as part of the bankruptcy court's case opening process.

The EOUST published the final rule and forms in October 2008. The uniform final report forms must be used in all cases that close on or after April 1, 2009.

LANGUAGE ASSISTANCE PLAN

Individuals who have sufficient English language skills to communicate basic information may, nonetheless, lack sufficient skills to communicate or understand detailed information regarding their bankruptcy cases. Under Executive Order 13166, as interpreted by Department of Justice guidance, those individuals may be entitled to language assistance under certain circumstances. The Program focused on language assistance to debtors at the section 341 meeting of creditors, which is conducted by the private trustee.

In FY 2008, the Program fine-tuned its Language Assistance Plan to provide for the phased-in implementation of providing free telephone interpreter services to non-English speaking debtors at section 341 meetings. Necessary equipment was purchased and the phase-in will continue in FY 2009.

PROVISIONS FOR CONSUMER DEBTORS

Under the Bankruptcy Code, the U.S. Trustee is responsible for approving eligible providers of pre-bankruptcy credit counseling and post-bankruptcy debtor education. Consumer debtors generally must seek credit counseling and debtor education from these providers as a condition of filing bankruptcy and receiving a discharge of debts.

An entity seeking approval as a credit counseling agency or debtor education provider must apply for approval by the Program. Application information and materials are posted on the Program’s Web site at <http://www.usdoj.gov/ust/eo/bapcpa/ccde/index.htm>.

Table 7.1. Approved Providers at Year-End

Type of Provider	Number Approved
Credit Counseling Agencies	155
Debtor Education Providers	278

Source: Executive Office for U.S. Trustees

In 2008, the Program completed 11 on-site reviews of approved credit counseling agencies and debtor education providers. The “quality service reviews” allow the Program to corroborate the information submitted in the application for approval, observe credit counseling and debtor education sessions, and obtain information about the operations of the credit counseling agency or debtor education provider.

The Program also investigated approximately two dozen consumer complaints against approved agencies and providers. Complaints addressed such issues as the acquisition of services, price, quality of services, and processing of certificates.

FEDERAL RULEMAKING

The EOUST’s proposed rule governing the application procedures and criteria for approval of pre-bankruptcy credit counseling agencies was published for public comment in FY 2008. The proposed rule established a presumptively reasonable credit counseling fee of \$50, and adopted the recommendation made by the Government Accountability Office that credit counseling agencies grant mandatory fee waivers for clients whose household income is less than 150 percent of the official poverty guidelines. In addition, among other things, the proposed rule specified the mandatory disclosures that agencies must make to clients and potential clients, and provided procedures for annual re-application for approval as a pre-bankruptcy credit

counseling agency and automatic expiration of approval under certain circumstances. The final rule will be published in FY 2009.

DEBTOR EDUCATION PILOT PROGRAM

The BAPCPA directed the Executive Office for U.S. Trustees to develop a personal financial management (debtor education) curriculum and materials and to conduct a pilot study in six judicial districts. The law required the EOUST to evaluate its own new curriculum and materials, as well as a sample of existing consumer education programs such as those provided by the credit industry, chapter 13 trustees, and consumer counseling groups.

After a competitive bidding process, the EOUST selected contractors to develop the curriculum and materials and to conduct the evaluation. The EOUST issued the report in May 2008. Key findings were as follows:

- ❖ Across all providers of financial management instruction, 97 percent of the debtors reported their ability to manage their finances had improved as a result of their participation in the program, and 97 percent said they would recommend the program to others.
- ❖ For debtors who did not already know the material covered in the curriculums, financial management instruction produced small but statistically significant gains in knowledge for most of the topics addressed by the survey questionnaires.
- ❖ On most of the topics where knowledge gains were evident immediately after the class, substantially more than half of the debtors retained the information three months later.
- ❖ Forty-four percent of the debtors expressed plans immediately after the class to improve at least one financial practice, and about 50 percent of those debtors reported three months later that they had executed these plans.

The report is posted on the Program's Web site at www.usdoj.gov/ust/eo/public_affairs/reports_studies/index.htm.



www.usdoj.gov/ust