



# Department of Justice

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**STATEMENT OF**

**CLIFFORD J. WHITE III  
DIRECTOR**

**EXECUTIVE OFFICE FOR UNITED STATES TRUSTEES  
U.S. DEPARTMENT OF JUSTICE**

**BEFORE THE**

**SUBCOMMITTEE ON REGULATORY REFORM,  
COMMERCIAL AND ANTITRUST LAW  
COMMITTEE ON THE JUDICIARY  
U.S. HOUSE OF REPRESENTATIVES**

**FOR A HEARING CONCERNING**

**A TIME TO REFORM: OVERSIGHT OF THE ACTIVITIES OF THE JUSTICE  
DEPARTMENT'S CIVIL, TAX, AND ENVIRONMENT AND NATURAL RESOURCES  
DIVISIONS AND THE U.S. TRUSTEE PROGRAM**

**PRESENTED**

**JUNE 8, 2017**

**Statement of Director Clifford J. White III**  
**Executive Office for United States Trustees**  
**U.S. Department of Justice**  
**Before the Subcommittee on Regulatory Reform, Commercial and Antitrust Law**  
**Committee on the Judiciary**  
**U.S. House of Representatives**  
**June 8, 2017**

Mr. Chairman and Members of the Subcommittee:

Thank you for the opportunity to appear before you today to discuss the activities of the United States Trustee Program (USTP or Program) to fulfill our mission to enhance the integrity and efficiency of the bankruptcy system for the benefit all stakeholders – debtors, creditors, and the American public. We have assembled a dedicated corps of more than 1,000 attorneys, financial analysts, and other professional and support personnel who are fully committed to that mission every day.

The USTP carries out a broad range of administrative, regulatory, and enforcement activities that are critical to the proper functioning of the bankruptcy system. For example, basic case administration depends upon our appointing and overseeing private trustees. Protecting the rights of all stakeholders relies, in significant measure, on the neutral United States Trustee enforcing the law as written by the Congress. And ferreting out fraud and abuse depends on the Program serving as the vigilant “watchdog” of the bankruptcy system.<sup>1</sup>

The USTP has responsibility for overseeing the administration of about 1.7 million ongoing bankruptcy cases in 88 judicial districts.<sup>2</sup> As of the end of Fiscal Year (FY) 2016, bankruptcy cases accounted for more than two-thirds of all cases in the federal judicial system. The Program covers about 300 bankruptcy courts and presides over statutory meetings of creditors held in about 400 locations. The Program consists of an Executive Office that provides overall policy and management direction, 21 regions that are established in statute, and 92 field office locations. This expansive field structure is necessary for the Program to participate efficiently in bankruptcy court proceedings and to maximize accessibility to the bankruptcy system by both debtors and creditors.

In my testimony provided to this Subcommittee last fall, I provided an overview of the Program and highlighted matters of special importance to the bankruptcy system. This statement updates the facts and observations discussed at that time and describes new activities.

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<sup>1</sup> See H.R. Rep. No. 595, 95th Cong., 2d Sess. 88 (1977) (United States Trustees “serve as bankruptcy watch-dogs to prevent fraud, dishonesty, and overreaching in the bankruptcy arena.”).

<sup>2</sup> The USTP has jurisdiction in all judicial districts except those in Alabama and North Carolina. In addition to specific statutory duties and responsibilities, United States Trustees “may raise and may appear and be heard on any issue in any case or proceeding under this title but may not file a plan pursuant to section 1121(c) of this title.” 11 U.S.C. § 307.

## **Civil Enforcement**

The USTP takes a balanced approach in its civil enforcement efforts to redress fraud and abuse in the bankruptcy system. Although a majority of the actions are taken to address debtor violations, the Program also focuses significant efforts on remedying wrongdoing by creditors and others who seek to exploit debtors. In FY 2016, the USTP took more than 31,000 civil enforcement actions, including court filings and out of court actions, with a potential monetary impact of \$965 million in debts not discharged, fees disgorged, and other relief. In the 14 years the Program has been tracking these data, we have taken more than 717,000 actions with a potential monetary impact in excess of \$17.3 billion.

### ***Debtor Abuse***

The Program combats debtor fraud and abuse primarily by seeking case dismissal if a debtor has an ability to repay debts and by seeking denial of discharge for the concealment of assets and other misconduct that harms creditors or the integrity of the bankruptcy process. About 60 percent of the 17,000 civil actions we took against debtors in the last fiscal year pertained to the “means test” that was adopted in the 2005 reform amendments. Under the means test, all individual debtors with primarily consumer debt<sup>3</sup> and income above their state median are subject to a statutorily prescribed formula to determine disposable income.<sup>4</sup> A case with disposable income above \$214.17 per month would be presumed abusive and may be dismissed.<sup>5</sup>

The USTP is required to file either a motion to dismiss or an explanation for declining to file such a motion in all presumed abuse cases. In FY 2016, the USTP declined to file a motion in 63 percent of presumed abuse cases as a result of special circumstances such as a recent job loss or continuing medical condition that justified an adjustment to the current monthly income calculation. The percentage of declinations has exceeded 60 percent in recent years as debtors and their counsel better understand the requirements of the statute and file presumed abuse cases only if special circumstances apply.

In addition to handling presumed abuse cases, the USTP also files motions to dismiss cases that are deemed to be abusive under a bad faith or totality of the circumstances standard. These enforcement actions are filed in cases where, among other things, the debtor makes

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<sup>3</sup> By statute, disabled veterans whose debts were incurred primarily while on active duty or while performing a homeland defense activity are exempted from the means test. The National Guard and Reservists Debt Relief Extension Act of 2015 exempts qualifying reservists and National Guard debtors called to active duty or to perform a homeland defense activity for not less than 90 days from the means test. This exemption is set to expire on December 19, 2019.

<sup>4</sup> The means test is based partially on allowable expense standards issued by the Internal Revenue Service for its use in tax collection.

<sup>5</sup> This dollar amount is adjusted every three years. *See* 11 U.S.C. § 104(b). The most recent adjustment was effective on April 1, 2016.

extravagant purchases right before filing bankruptcy or fails to provide accurate financial information. The USTP significantly increased the number of these actions in FY 2016.

In FY 2016, the USTP also increased substantially the number of complaints it filed to deny a debtor's discharge in the most severe cases of misconduct, such as the concealment of assets. For example, after a two-day trial on a complaint to deny discharge filed by the USTP's Lexington office, the Bankruptcy Court for the Eastern District of Kentucky denied a debtor's chapter 7 discharge of \$6.3 million in unsecured debt. In that case, the debtor did not disclose the transfer of five vehicles valued at \$60,000 to a family member shortly before the bankruptcy filing, an interest held in real estate, and ownership of University of Kentucky men's basketball tickets worth more than \$10,000. The debtor also failed to explain his asserted decline in net worth from more than \$7 million two years before filing bankruptcy to negative \$6.5 million according to the bankruptcy documents.

### ***Creditor Abuse***

In addition to debtor fraud and abuse, the USTP combats improper activity by creditors. In many creditor abuse cases, there are multiple victims, including debtors and other creditors whose distributions are diminished by overpayments to the violating creditor. Such activity is also an affront to the integrity of the bankruptcy system itself.

Beginning in 2007, the USTP started identifying patterns of inflated billing, imposition of improper default service fees, and other misconduct in the mortgage servicing industry. After assembling a vast array of data from thousands of cases, conducting scores of depositions, and reviewing thousands of documents, the USTP has entered into six national settlements that provided monetary remediation and other relief for homeowners in bankruptcy and, in some cases, required mortgage servicing standards to prevent future abuse of the bankruptcy rules.

Although field offices continue to monitor mortgage claims to identify patterns of abuse in bankruptcy, and we continue to address systemic issues with some servicers, we are pleased that industry compliance and self-reporting has improved. For example, last month, as a result of self-reporting, the Program filed with the court two agreements with JPMorgan Chase Bank, N.A., to resolve bankruptcy-related violations relating to inaccurate mailings sent to more than 10,000 accounts of homeowners in bankruptcy and inaccurate billing statements that may have affected more than 6,000 accounts of homeowners in bankruptcy. As remediation to the affected homeowners, Chase will provide a total of approximately \$2.8 million in payments, refunds, and credits.

The Program also is continuing its work to investigate the robo-signing of documents, violations of the discharge injunction, and other non-compliance with bankruptcy statutes and rules committed by both secured and unsecured lenders.

### ***Professional Misconduct***

The Program has a long history of utilizing statutory tools to sanction debtors' attorneys who fail to fulfill their basic obligations to their client through such actions as failing to meet

with their client, causing costly delays by not appearing at court or “section 341” proceedings, and engaging in a range of other unprofessional behavior. The victims of such professional misconduct are not only the debtor client, but also creditors and the court, which expend scarce resources in proceedings that are unnecessarily lengthy or complex due to the failure of debtors’ counsel to do their jobs properly. Under the Bankruptcy Code, this conduct may be sanctionable and debtors may receive refunds of the attorneys’ fees already paid. In FY 2016, the Program increased the number of formal actions taken under sections 329 and 526 of the Bankruptcy Code by over 30 percent combined. We also utilized other statutory tools to combat this abuse.

In a series of “town hall” meetings held with all Program employees, as well as meetings with bankruptcy judges and private trustees, almost all those surveyed said that the problem of underperforming consumer debtor attorneys was on the rise, particularly among national law firms that advertise on the Internet. Based on this information, and the need to tackle system-wide problems with coordinated national action, the USTP assembled litigation groups to investigate and take action where violations in multiple jurisdictions were identified. In fact, it appears that at least two national law firms have disbanded as a result of the Program’s enforcement actions against them.

Among the more noteworthy allegations we are investigating are instances of lawyers not merely failing to perform, but misusing the client relationship to sell services that are of little or no value to the debtor. Some of these schemes may be abusive and others may be fraudulent. Our investigations and actions are continuing and remain a top priority of the USTP in 2017.

### ***Misuse of the Bankruptcy System to Administer Marijuana Assets***

Although such cases are still small in number compared to total bankruptcy filings, the USTP has seen an increase in the number of cases that are filed by active marijuana businesses or involve marijuana assets. For several years, the Program has moved to dismiss these cases on a variety of statutory grounds depending on the facts of the case. In all instances, the basic argument for dismissal is that the bankruptcy system cannot be used to facilitate illegal activity and the Bankruptcy Code does not provide a mechanism to administer assets that cannot legally be possessed or sold under federal law.<sup>6</sup> Importantly, the courts generally have upheld this position, and the USTP was successful in the only case that has been decided by an appellate court to date, *Arenas v. United States Trustee*, 535 B.R. 845 (B.A.P. 10<sup>th</sup> Cir. 2015). Cases continue to be litigated.

In the past, USTP has communicated this policy informally to more than 1,100 private trustees who administer bankruptcy cases. On April 26, 2017, I directed the private trustees who administer bankruptcy cases subject to USTP oversight to inform the United States Trustee when they become aware that a case assigned to them includes assets or income derived from marijuana. I also reiterated the Program’s longstanding position that debtors with assets or

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<sup>6</sup> Depending on the facts of the specific case, there often are many grounds for the USTP to move to dismiss a marijuana case or take other appropriate civil action. For example, the law does not allow a consumer or business to confirm a bankruptcy repayment plan that relies on activity forbidden by law, and funding a plan from income derived from a substance that is illegal under the Controlled Substances Act would be a means forbidden by law. Further, a private trustee may not sell marijuana because selling a controlled substance violates federal law.

income derived from marijuana may not proceed through the bankruptcy system. The goal of the directive is to ensure uniform application of the bankruptcy law and to protect trustees from being placed in the untenable position of selling or otherwise administering an asset that cannot legally be possessed or sold under federal law. In cases involving marijuana assets or income, the United States Trustees will file a motion to dismiss and other pleadings as appropriate.

### **Criminal Enforcement**

In addition to its civil enforcement mandate, the USTP is required by statute to refer potential criminal violations to the United States Attorney and to assist in criminal prosecution of bankruptcy crimes. In FY 2016, we made 2,158 criminal referrals on matters ranging from concealment of assets to tax fraud. Although many of our staff assist law enforcement, approximately 25 USTP attorneys are designated as Special Assistant United States Attorneys to participate in criminal proceedings. In addition, we participate in over 70 bankruptcy and other fraud working groups with our federal and state law enforcement partners. Another key component of our criminal enforcement work is training both our own staff and law enforcement officials. In FY 2016, we provided training to approximately 3,900 USTP, United States Attorney, Federal Bureau of Investigation, and other law enforcement personnel.

The following recent case examples illustrate the wide array of prosecutions that result from USTP referrals:

- A prominent businessman pleaded guilty to wire fraud, money laundering and bankruptcy fraud for defrauding an elderly widow out of \$1.1 million before he filed bankruptcy in an attempt to discharge \$148 million in debt. The defendant was sentenced to 70 months in prison and ordered to pay \$1.1 million in restitution.
- The operator of a foreclosure rescue scheme pleaded guilty to bankruptcy fraud and making a false statement during a bankruptcy proceeding. The defendant victimized distressed homeowners by falsely promising to save their homes from foreclosure and then filing fraudulent bankruptcy cases in their names without their knowledge or consent. The defendant was sentenced to three years in federal prison, required to pay \$25,000 in restitution, and enjoined from participating in businesses involving mortgage brokerage, real estate sales, or credit.
- An attorney pleaded guilty to bankruptcy fraud for improperly collecting filing fees from clients without informing the bankruptcy court. The attorney was sentenced to 34 months in prison and three years of supervised relief and ordered to pay nearly \$70,000 in restitution.

### **Chapter 11 Business Reorganization Issues**

The Program carries out significant responsibilities in business reorganization cases. These responsibilities include such matters as: appointing official committees of creditors;

objecting to the retention and compensation of professionals whose applications do not meet statutory standards; reviewing and objecting to disclosure statements to ensure adequate information is provided to stakeholders; appointing trustees and examiners when warranted, such as when there is suspected financial wrongdoing; enforcing the statutory limitations on insider and executive compensation; and moving to dismiss or convert about one-third of chapter 11 cases each year because they are not progressing toward financial rehabilitation. We do not substitute our business judgment for that of incumbent management (*i.e.*, the debtor-in-possession), but the role of the USTP is critical to protecting the interests of all stakeholders by advocating for strict compliance with the law and promoting management and professional compliance.

Our role as the “watchdog” of the system is especially important in chapter 11 business bankruptcies. In the 2005 amendments to the Bankruptcy Code, Congress added important provisions to ensure greater management accountability in business cases. Among other things, these provisions imposed additional duties upon the USTP, including the responsibility to move to oust management that is suspected of financial irregularities and appoint an independent chapter 11 trustee, as well as to object to executive and insider bonuses that do not fall within the narrow confines permitted by statute.

Among the Program’s more significant chapter 11 initiatives this year are the development of guidelines on fees for financial professionals and the proper terms of employment of chief restructuring officers in chapter 11 cases.

### ***Chapter 11 Professional Fees***

Under the Bankruptcy Code, the court must approve all professional fees that are paid from the bankruptcy estate under criteria set forth in statute. This requirement reflects the unique environment in which bankruptcy cases arise. Often, there is urgency to the bankruptcy filing due to impending foreclosure, lack of cash to continue operations, or other emergencies that precipitate a filing. As a result, the client control present in other business litigation often is absent. Moreover, a bankruptcy case involves a multiplicity of parties with divergent interests that are affected by the conduct of the case and divergent levels of financial wherewithal to assert their interests. Therefore, non-debtor parties seldom exercise oversight or do so only as a litigation tactic. Because of the unique dynamics in a bankruptcy case, attorney and other professional costs may be inflated, and the USTP is often the only party to object to professional fees.

In light of record-breaking fee awards in major bankruptcy cases and escalating bankruptcy rates at a time when the non-bankruptcy marketplace was imposing more cost-conscious controls on outside counsel, in 2013 the Program issued new Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed under 11 U.S.C. § 330 for Attorneys in Larger Chapter 11 Cases (Guidelines). The Guidelines are based upon statutory authority, but do not have the force of law. Although it is difficult to quantify any resulting cost savings, law firm practices have improved, fee applications are more restrained, and there is greater consistency in fee review.

A major ongoing project of the Program is to issue similar large case guidelines pertaining to the fees of financial advisors, investment bankers, and other professionals. The role and costs of these financial professionals in bankruptcy cases have grown dramatically in recent years. Furthermore, financial professionals, especially investment bankers, have not submitted descriptions of the work performed in the detail generally required of attorneys. Additionally, the nexus between tasks performed and achievement of case milestones, metrics of success, differences in fee arrangements in bankruptcy as compared with the broader marketplace, and other relevant factors are particularly hard to assess based upon the fee applications traditionally filed in bankruptcy court.

In developing guidelines for financial professionals, we are following the same transparent process we used with the attorney fee Guidelines. The process mirrors in significant part rulemaking under the Administrative Procedure Act (APA), even though the guidelines are not governed by the strictures of the APA. We are conducting preliminary research and outreach to the financial industry that will be followed by publication of draft guidelines for public comment. We also are likely to hold a public meeting where commenters can respond to USTP questions. Based upon that record, the USTP will issue these final guidelines. This process, as well as the guidelines themselves, will bring greater transparency and consistency to USTP review of covered fee applications.

### ***Role of Chief Restructuring Officers***

Professionals who are employed by the chapter 11 debtor-in-possession and official committees of creditors must file an application that is approved by the bankruptcy court. Another important role of the USTP is to review those applications and object if there are conflicts of interest or inadequate disclosure of connections.

In larger cases, the debtor corporation sometimes employs a Chief Restructuring Officer (CRO) to operate the company during bankruptcy. The employment of a CRO can present special issues of corporate governance. For example, a CRO should not be on the board of directors because those dual roles would create a disqualifying conflict under the bankruptcy law. To address these issues consistently throughout the country, the USTP previously developed what came to be known as the “J. Alix Protocol,” which sets forth the special conditions to be imposed to ensure absence of conflicts and sound corporate governance. Without these conditions, the USTP would object to the employment application.

Since the protocol was adopted almost two decades ago, however, there have been many changes in the CRO industry. Both the frequency of employment of CROs and the scope of services offered by CRO firms have grown dramatically. Among the issues that should be addressed are how to ensure the CRO firm has no conflicts of interest – whether through enhanced disclosures of connections, through efforts to monitor role-switching once a case commences, or through robust corporate governance with a CRO subject to the control of an independent, non-conflicted board. We are also evaluating how to align CRO indemnification in bankruptcy with the non-bankruptcy marketplace to assure comparable treatment. We have reached out to stakeholders for information on how the protocol could be updated to account for facts of modern practice, while remaining faithful to the conflict of interest provisions of the



Bankruptcy Code. After completing our initial outreach, we plan to follow the same process we followed for the Guidelines for attorney fees in larger chapter 11 cases. To ensure transparency, we will publish proposed revisions, seek public comment, hold a public meeting, and issue final guidelines that will ensure consistent treatment of CRO applications by all of the USTP offices around the country.

### **Appellate Advocacy**

The USTP maintains an active appellate practice, which involved about 100 appeals in the last fiscal year. As part of our appellate efforts, we actively participate in bankruptcy cases before the Supreme Court and guard against efforts to circumvent or dilute the Court's bankruptcy rulings. For example, the Supreme Court agreed with us in *Schwab v. Reilly*, 560 U.S. 770 (2010), that a bankruptcy estate does not lose its interest in property when a debtor claims an exemption in the property in a dollar amount that is within the statutory exemption limit. After the Judicial Conference's Advisory Committee on Bankruptcy Rules amended the official bankruptcy form to implement *Schwab*, we participated before the Fifth Circuit as *amicus curiae* in a case to explain what debtors must do on the new form to claim an unobjectionable exemption under *Schwab*. Similarly, we recently acted as *amicus* before the district court in Chicago to prevent a financial advisor from recovering professional fees in derogation of the Supreme Court's decision in *Baker Botts LLP v. ASARCO LLC*, \_\_\_ U.S. \_\_\_, 135 S. Ct. 2158 (2015).

One of the major roles of the USTP is to ensure that bankruptcy laws are followed as the Congress has written those laws. This responsibility often presents itself in chapter 11 cases in which some parties understandably seek to advance their interests over the rights of other parties. In the case of *Czyzewski v. Jevic Holding Corp.*, \_\_\_ U.S. \_\_\_, 137 S. Ct. 973 (2017), the USTP unsuccessfully advocated on the side of laid-off truck drivers in chapter 11 proceedings before the bankruptcy court and on appeal to the court of appeals. The debtor trucking company had fired its employees and filed for bankruptcy relief the next day. Ultimately, the company decided to dismiss the bankruptcy case, but only after agreeing to pay some creditors, but not others. Even though the Bankruptcy Code provides employee wage claims with a higher repayment priority than the claims of general unsecured creditors, the bankruptcy court approved an agreement under which the truck drivers were not paid while lower priority unsecured creditors were paid. The United States filed an *amicus curiae* brief in the Supreme Court, and the Court ultimately reversed the lower court's approval of the priority-skipping payments. The Supreme Court's holding may have broader application in other bankruptcy contexts of great interest to USTP chapter 11 practice and enforcement.

The *Jevic* case stands as a good example of the role the USTP can play in reorganization cases. As the only neutral party and one without a pecuniary interest, we are able to ensure that the provisions of the Bankruptcy Code are followed by all parties to the case. Sometimes we side with employees and other times we side with major lenders. But at all times, we advocate for the most faithful construction of the Code.

## **PROMESA Filing by the Commonwealth of Puerto Rico**

On May 3, 2017, the Commonwealth of Puerto Rico filed a petition for relief to adjust its debts under title III of the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA). COFINA, an instrumentality of the Commonwealth, filed a separate title III petition on May 5, 2017. Other instrumentalities subsequently filed.

As in cases filed under chapter 9 of the Bankruptcy Code, which provides debt relief for state municipalities, the courts and the United States Trustees have significantly limited powers compared to their powers under the reorganization provisions of chapter 11. Under PROMESA, the United States Trustee has two responsibilities:

- *Appoint an Official Committee of Unsecured Creditors.* The United States Trustee will appoint one or more committees of creditors who are “representative” of the various unsecured creditor constituencies, including retirees whose pension plans are underfunded. The process involves written solicitation, publication, and a formation meeting at which candidates appear and are questioned by the United States Trustee about the nature of the debt they hold and any potential conflicts of interest. The United States Trustee will then file a notice of the committee’s appointment with the court. The official committee is a fiduciary for all unsecured creditors and serves as a critical negotiating partner with the debtor. The committee may employ attorneys and other professionals at the expense of the debtor to assist the committee in carrying out its duties.
- *Review Professional Fees.* The United States Trustee will review the fee applications filed with the court by attorneys, financial advisors, and other professionals who are employed by the Commonwealth, its Financial Oversight and Management Board, and the committee(s) to assist in the title III debt adjustment process. Among other things, the United States Trustee will confer with the parties and file with the court appropriate papers to ensure that fee applications conform with the Program’s guidelines governing attorneys’ and other professionals’ fees (*e.g.*, submission of budgets and disclosure of rates outside of insolvency proceedings so that above-market rates are not charged).

## **Private Trustee Oversight**

A core responsibility of the United States Trustees is to appoint and supervise private trustees who handle the day-to-day administration of consumer bankruptcy estates under chapters 7, 12, and 13 of the Bankruptcy Code and who distribute on average more than \$10 billion annually from the assets of these estates. In FY 2016, United States Trustees oversaw the activities of about 1,400 private trustees, who handled approximately 1.7 million ongoing cases. The Program trains trustees and evaluates their performance; reviews their financial operations; and ensures the effective administration of estate assets.

With chapter 7 cases representing about 63 percent of all bankruptcy cases, chapter 7 trustees play an indispensable role in the bankruptcy system. Despite this, in recent years, they have seen a decline in their overall compensation. Chapter 7 trustees receive \$60 per case from the fees paid by the debtor upon filing a bankruptcy petition (an amount that has not increased since 1994), and may receive an additional amount in cases with assets based upon a percentage of the distributions made to creditors and when they serve as a professional in a case.

Total chapter 7 trustee compensation from all sources – including no-asset case fees, commissions on distributions in asset cases, and fees to the trustee as professional in a case – declined by over 10 percent cumulatively from FY 2012 through FY 2015 (when one anomalous case is excluded). Though compensation did rise in FY 2016, the USTP supports an increase in the \$60 basic fee, but does not endorse any specific proposal for achieving this increase.

### **Credit Counseling and Debtor Education**

To ensure debtors are aware of any viable alternatives to bankruptcy and to provide tools to avoid future financial problems when they exit bankruptcy, the Code requires that individual debtors receive credit counseling before filing (including a discussion of options outside of bankruptcy) and take a personal financial management education course before receiving a discharge of debts. A primary responsibility of the United States Trustees is to approve providers who meet statutory qualifications to offer these services to debtors. Currently, about 120 credit counseling agencies and 200 debtor education providers are approved to offer these services. Around 20 percent of credit counseling certificates and debtor education certificates are issued at no or reduced cost. Of those paying the full fee, the average combined cost of pre-bankruptcy credit counseling and post-discharge debtor education is around \$50. It is clear that credit counseling and debtor education are accessible at a relatively modest cost.

### **Fiscal Year 2018 Appropriation Request**

The USTP is funded through appropriations made by Congress that are offset by a portion of fees paid by bankruptcy debtors and deposited into the United States Trustee System Fund. Approximately 61 percent of the Program's revenue is derived from quarterly fees paid in chapter 11 reorganization cases; 38 percent is from filing fees paid in chapters 7, 11, 12, and 13 cases; and one percent is from interest earnings and other miscellaneous revenue.

For FY 2018, the USTP requests \$225.5 million. This is nearly the same appropriation as in FY 2017 and the fourth consecutive year at essentially the same level. The USTP's appropriation in FY 2017 is less than 2 percent above its appropriation of FY 2007. The USTP has absorbed this differential in funding from its base resources.

### ***Resource Management***

Over the past 10 years, the USTP has exercised significant budgetary restraint while, at the same time, achieving its mission and expanding its national enforcement capacity. The USTP has reduced overhead, adopted innovative work flows and methodologies to leverage

resources regionally and nationally, and focused enforcement initiatives on systemic abuses of the bankruptcy system.

Between FY 2007 and FY 2016, the Program has reduced its staffing by 14 percent, and is making further reductions in FY 2017. The Program's ability to sustain such a high level of productivity would simply not be possible without the extraordinary efforts of its staff across the country who have worked harder, assumed new duties, and creatively addressed challenges. Today, more than 20 percent of all senior positions in the Program are filled by employees doing "double duty"; staff resources increasingly are allocated on a regional or national basis so that staff working in one office may dedicate substantial time to performing tasks in another office where resource challenges are more pronounced; and four major tasks performed in all offices, such as reviews of financial reports, have been "functionally consolidated" so they now are performed by dedicated teams of staff who can efficiently process a larger number of reports. Moreover, we have consolidated six office locations that were geographically proximate into three offices.

Despite the significant efforts we have already undertaken, we will continue to look for opportunities to consider additional reorganization and streamlining plans in accordance with the President's directive to make government more efficient.

### ***Quarterly Fee Proposal***

From FY 1989 through FY 2016, the Program's appropriation was fully offset by deposits in the U.S. Trustee System Fund. During FY 2017, however, the USTP projects exhausting the balance of the Fund and falling short of fully offsetting its appropriation. To address this issue in FY 2018 and beyond, the USTP proposes to adjust quarterly fees for the largest chapter 11 debtors.

The President's Budget request for FY 2018 contains a proposal to increase offsetting revenues collected into the Fund. This proposal was contained in the FY 2017 request, but was not enacted as part of the Consolidated Appropriations Act, 2017. The quarterly fee proposal provides for an increase in quarterly fees paid by the largest 10 percent of chapter 11 debtors with disbursements of at least \$1 million per quarter, thereby excluding practically all small businesses. The increase would be capped at one percent of disbursements made per quarter by the debtor or \$250,000, whichever is less.<sup>7</sup> This amount represents only a small portion of the total cost of chapter 11 case administration. It is expected that this proposed fee increase will offset future appropriations.

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<sup>7</sup> We appreciate that the fee increase proposal was incorporated in section 4 of the Bankruptcy Judgeship Act of 2017, H.R. 2266, 115<sup>th</sup> Cong. (1<sup>st</sup> Sess. 2017) (Bill), which was passed by the House of Representatives on May 17, 2017. The Bill does not include the provision in the FY 2018 President's budget whereby the Director of the USTP may decrease the amount after three years. Instead, the Bill provides that the existing fee schedule applies if the balance of the Fund as of the end of the prior fiscal year exceeds \$200 million, thereby ensuring that the fee amount may be adjusted annually to either the current or the proposed increased amount depending on the Fund's balance.

## **Conclusion**

The United States Trustee Program continues to achieve its mission due to the extraordinary dedication of its employees and diligent management of increasingly scarce resources. The USTP has advanced the integrity and efficiency of the bankruptcy system for the benefit of all stakeholders – debtors, creditors, and the public – through prudent administration and aggressive enforcement action that combats fraud and abuse committed by debtors, creditors, and professionals alike. We uphold the law as Congress has written it to ensure that the protections of the Bankruptcy Code are extended to all participants in the bankruptcy system.

It is an honor to lead the USTP and its employees, who are among the most dedicated in all of Government. They deserve respect and appreciation for their talents, service to the public, and noteworthy accomplishments.

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