United States Department of Justice
Executive Office for United States Trustees

Report to Congress:

Criminal Referrals by the United States Trustee Program Fiscal Year 2015

(As required by Section 1175 of the Violence Against Women and Department of Justice Reauthorization Act of 2005, Public Law 109-162)

April 2016

TABLE OF CONTENTS

EXECUTIVE SUMMARY

The Director of the Executive Office for United States Trustees (EOUST) is required to submit an annual report to Congress under the provisions of Section 1175 of the Violence Against Women and Department of Justice Reauthorization Act of 2005 (P.L. 109-162). Section 1175 states:

> The Director of the Executive Office for United States Trustees shall prepare an annual report to the Congress detailing – (1) the number and types of criminal referrals made by the United States Trustee Program; (2) the outcomes of each criminal referral; (3) for any year in which the number of criminal referrals is less than for the prior year, an explanation of the decrease; and (4) the United States Trustee Program's efforts to prevent bankruptcy fraud and abuse, particularly with respect to the establishment of uniform internal controls to detect common, higher risk frauds, such as a debtor's failure to disclose all assets.

The United States Trustee Program (Program or USTP) made 2,131 bankruptcy and bankruptcy-related criminal referrals during Fiscal Year (FY) 2015. This represents a 2.5 percent increase from the 2,080 criminal referrals made during FY 2014. The five most common allegations contained in the FY 2015 criminal referrals involved tax fraud, false oath or statement, concealment of assets, bankruptcy fraud scheme, and identity theft or use of false/multiple Social Security numbers.

Of the 2,131 criminal referrals, as of January 7, 2016, formal criminal charges had been filed in connection with 10 of the referrals, 1,276 of the referrals remained under review or investigation, and 845 of the referrals were declined for prosecution.

In FY 2015, the Program was an active member of the President's Financial Fraud Enforcement Task Force (FFETF), two national working groups, and bankruptcy fraud and other specialized working groups and task forces in districts across the country. Program staff contributed to the prosecution of bankruptcy and bankruptcy-related crimes by serving as Special Assistant U.S. Attorneys in cases, assisting with investigations, and providing support as expert and fact witnesses. The Program employs a variety of strategies to identify fraud including the Program's Internet email "Hotline" which enables individuals to report suspected bankruptcy crimes. A link to the FFETF's Web site also is provided on the Program's Web site to facilitate the reporting of financial crimes not involving bankruptcy.

INTRODUCTION

Section 1175 of the Violence Against Women and Department of Justice Reauthorization Act of 2005 (P.L. 109-162) requires the Director of the EOUST to submit a "report to Congress detailing – (1) the number and types of criminal referrals made by the United States Trustee Program; (2) the outcomes of each criminal referral; (3) for any year in which the number of criminal referrals is less than for the prior year, an explanation of the decrease; and (4) the United States Trustee Program's efforts to prevent bankruptcy fraud and abuse, particularly with respect to the establishment of uniform internal controls to detect common, higher risk frauds, such as a debtor's failure to disclose all assets."

The Program is the component of the Department of Justice whose mission is to promote the integrity and efficiency of the bankruptcy system for the benefit of all stakeholders – debtors, creditors, and the public. The Program consists of 21 regions with 93 field office locations nationwide and an Executive Office in Washington, DC. Each field office is responsible for carrying out numerous administrative, regulatory, and litigation responsibilities under title 11 (the Bankruptcy Code) and title 28 of the United States Code.[1/]

The Program has a statutory duty to refer matters to the United States Attorneys' offices (USAOs) for investigation and prosecution that "relate to the occurrence of any action which may constitute a crime." 28 U.S.C. § 586(a)(3)(F). The statute also requires that each United States Trustee shall assist the United States Attorney in "carrying out prosecutions based on such

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[1/] The Program has jurisdiction in all federal judicial districts except those in Alabama and North Carolina.

action." With the enactment of 18 U.S.C. § 158, which requires designation of a prosecutor and a Federal Bureau of Investigation (FBI) agent in each district to address bankruptcy-related crimes, Congress reaffirmed the importance of the USAOs and the FBI working in cooperation with the Program to protect the integrity of the bankruptcy system.

I. NUMBER AND TYPES OF CRIMINAL REFERRALS

The Program tracks criminal referrals using its automated Criminal Enforcement Tracking System (CETS). Program personnel enter information into CETS that relates to each criminal referral and are required to update information for each referral at least once every six months. The system is designed to provide an accurate measure of criminal enforcement actions, assist in trend identification, and facilitate management improvements.

In FY 2015, the Program made 2,131 bankruptcy and bankruptcy-related criminal referrals. Each referral may be sent to multiple agencies, but it is counted only once in CETS. Similarly, each referral may contain multiple allegations. The breadth of allegations involved in criminal referrals is evident in Table 1, with referral allegations in 46 separate categories. The five most common allegations contained in the FY 2015 criminal referrals involved tax fraud (44%), false oath or statement (28.5%), concealment of assets (25%), bankruptcy fraud scheme (21.4%), and identity theft or use of false/multiple Social Security numbers (16.1%).

Table 1: Criminal Referrals by Type of Allegation		
Type of Allegation	Referrals	
	Number	Percent*
Tax Fraud [26 U.S.C. § 7201, et seq.]	938	44.0%
False Oath/Statement [18 U.S.C. § 152(2) and (3)]	608	28.5%
Concealment [18 U.S.C. § 152(1) and (7)]	532	25.0%
Bankruptcy Fraud Scheme [18 U.S.C. § 157]	455	21.4%
ID Theft or Use of False/Multiple Social Security Numbers	344	16.1%
Mail/Wire Fraud [18 U.S.C. §§ 1341 and 1343]	171	8.0%
Perjury/False Statement	149	7.0%
Concealment/Destruction/Withholding of Documents [18 U.S.C. § 152(8) and (9)]	121	5.7%
Mortgage/Real Estate Fraud	78	3.7%
Sarbanes/Oxley [18 U.S.C. § 1519]	67	3.1%
Bank Fraud [18 U.S.C. § 1344]	66	3.1%
Forged Document(s)	65	3.1%
Conspiracy [18 U.S.C. § 371]	42	2.0%
Federal Program Fraud	33	1.5%
State Law Violation(s)	30	1.4%
Embezzlement [18 U.S.C. § 153]	29	1.4%
Post-Petition Receipt of Property [18 U.S.C. § 152(5)]	27	1.3%
Misuse of Seals of Courts; Seals of Departments or Agencies [18 U.S.C. §§ 505 and 506]	25	1.2%
Money Laundering [18 U.S.C. §§ 1956 and 1957]	23	1.1%
False Claim [18 U.S.C. § 152(4)]	21	1.0%
Investor Fraud	21	1.0%
Credit Card Fraud/Bust-Out	11	<1%
Threat of Violence	11	<1%
Corporate Fraud	9	<1%
Disregard of Bankruptcy Law/Rule by BPP [18 U.S.C. § 156]	9	<1%
Corporate Bust-Out/Bleed-Out	8	<1%
Professional Fraud	8	<1%
Extortion	7	<1%
Internet Fraud	7	<1%
Health Care Fraud [18 U.S.C. § 1347]	5	<1%
False Personation [18 U.S.C. § 912]	4	<1%
Racketeer Influenced and Corrupt Organizations (RICO)	4	<1%
Serial Filer	4	<1%
Bribery [18 U.S.C. § 152(6)]	3	<1%
Obstruction of Justice	3	<1%
Abusive Reaffirmation of Debt/Creditor Abuse	2	<1%
Criminal Contempt [18 U.S.C. § 402]	2	<1%
Larceny	2	<1%
Subornation of Perjury	2	<1%
Terrorism	2	<1%
Adverse Interest/Officer Conduct [18 U.S.C. § 154]	1	<1%
Collusive Bidding	1	<1%
Deprivation of Honest Services	1	<1%
Drug Offense	1	<1%
Insurance Fraud	1	<1%
Trespassing	1	<1%
1) Percent based on 2,131 referrals. One referral often contains more than one allegation, so the sum of the percentages for referrals will exceed 100 percent. 2) Allegation information can change over time. Table 1 reflects information contained within CETS as of January 7, 2016.		

II. OUTCOMES OF CRIMINAL REFERRALS

Table 2 shows the collective outcome/disposition of the 2,131 criminal referrals the Program made during FY 2015 as of January 7, 2016.[2/] Of the 2,131 referrals, 1,276 referrals (59.9%) remained under investigation or review, 10 referrals (0.4%) resulted in formal charges, and 845 referrals (39.7%) were declined for prosecution.

Table 2: Outcome/Disposition of FY 2015 Referrals (as of 01/07/2016)

Outcome/Disposition[1]	Referrals	
	Number	Percent[2]
Under Review in United States Attorney's Office	677	31.8%
With Investigative Agency	599	28.1%
Formal Charges Filed (Case Active)	7	0.3%
Formal Charges Filed (Case Closed)	3	0.1%
– At least One Conviction or Guilty Plea	3	
– At least One Pre-trial Diversion	0	
– At least One Dismissal	0	
– At least One Acquittal	0	
Prosecution Declined by United States Attorney	845	39.7%

1) Outcome and disposition information will change over time. The information contained in Table 2 reflects information contained within CETS as of January 7, 2016.
2) Rounded percent based on 2,131 referrals.

The 10 cases referenced in Table 2 in which formal charges were filed between October 1, 2014, and January 7, 2016, are prosecutions that originated from a FY 2015 referral as derived from CETS.[3/] It is important to note that white-collar criminal referrals like those made by the Program often require significant time and resources to investigate. As a result, it

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[2/] The Program is not the source of official disposition information. CETS is designed primarily to track referrals made by the Program to U.S. Attorneys. While Program staff work with local USAOs to update disposition information semi-annually, delays in reporting, as well as differences in tracking systems, may result in reporting variances between the agencies.

[3/] Table 2 reflects only disposition information related to referrals the Program made in FY 2015. It does not reflect the entirety of prosecutions with bankruptcy charges brought by the Department of Justice in FY 2015. A reporting of all prosecutions would include those that originated from Program referrals in prior fiscal years, as well as prosecutions related to referrals not made by the Program.

generally takes more than two years before there is a reportable action in CETS. Therefore, it is reasonable that a high percentage of cases referred in FY 2015 are still under investigation or review.

III. COMPARISON WITH CRIMINAL REFERRALS MADE IN PREVIOUS YEAR

As shown in Table 3, the number of criminal referrals made during FY 2015 represents a 2.5 percent increase from the number of referrals made in FY 2014.

Table 3: Comparison Between Criminal Referrals in FY 2014 and FY 2015

FY 2014	FY 2015	Percent Change
2,080	2,131	2.5%

The Program has experienced near continuous growth in the number of bankruptcy and bankruptcy-related criminal referrals over the past nine years, with the exception of a slight decline in FY 2013. The Program's sustained efforts to detect and refer suspected criminal activity, including FY 2015's increase in referrals despite continued resource challenges, demonstrate the Program's continuing commitment to this important statutory duty.

IV. PROGRAM EFFORTS TO PREVENT BANKRUPTCY FRAUD AND ABUSE

The Program is committed to identifying and referring for prosecution bankruptcy fraud and other crimes, and has systems in place to detect fraud schemes. The Program's Office of Criminal Enforcement (OCE) oversees and coordinates the Program's criminal enforcement efforts, and has strengthened the Program's ability to detect, refer, and assist in the prosecution of criminal violations. Through issuing guidance and resource materials, providing extensive training, participating in national working groups, and working with its law enforcement partners, the Program has established the necessary systems to combat fraud and abuse that threaten the integrity of the bankruptcy system.

Highlights of the Program's criminal enforcement efforts in FY 2015 include the following:

Bankruptcy Fraud and Other Specialized Working Groups and Task Forces. The Program is an active member of the President's Financial Fraud Enforcement Task Force and the Bank Fraud and Identity Theft Working Groups sponsored by the Department of Justice's Criminal Division. In addition, the Program participates in more than 75 local bankruptcy fraud working groups, mortgage fraud working groups, and other specialized task forces throughout the country. Members of these working groups and task forces include representatives from the USAOs, FBI, United States Postal Inspection Service, Internal Revenue Service-Criminal Investigation, Offices of the Inspector General (OIG) for the Social Security Administration and the Department of Housing and Urban Development, United States Secret Service, Office of the Special Inspector General for the Troubled Asset Relief Program, and Immigration and Customs Enforcement, among others.

Special Assistant United States Attorneys and Other Staff Support. Approximately 25 Program attorneys in field offices across the country are designated as Special Assistant U.S Attorneys to assist USAOs in the investigation and prosecution of bankruptcy and bankruptcy-related crimes. Other Program staff also are called upon to assist with investigations and to provide expert or fact testimony at trial. For example, in FY 2015, an Assistant U.S. Trustee received a Cooperative Achievement Award from the U.S. Department of Health and Human Services (HHS) for her work as a member of the Multi-Program Grant federal investigative team that included representatives from the USAO, the FBI, HHS-OIG, and the Departments of Education and Agriculture. The award recognized the team for its successful investigation and prosecution of the former president of a chapter 11 debtor, whose company had received Head Start funding and other federal assistance. That individual pleaded guilty to theft of government property.

In addition, the OCE has three Program trial attorneys on detail who serve as part-time regional criminal coordinators. These individuals provide support, assistance, and training to

Program personnel regarding the identification and referral of suspected bankruptcy fraud, and coordinate with USAOs within their designated regions.

Training. During FY 2015, the OCE and Program staff presented more than 100 bankruptcy and bankruptcy-related fraud training programs that reached approximately 3,700 federal, state, and local law enforcement personnel, Program employees, private bankruptcy trustees, and members of the bar and other professional associations throughout the country. The Program customizes each presentation to maximize impact and utilizes a variety of educational formats to deliver training, including in-person presentations, online meeting technology, and video teleconferences. Notable for FY 2015 was the launch of a series of FBI bankruptcy fraud training conference calls created in partnership with the Financial Institution Fraud Unit of the FBI's Criminal Investigation Division, and presentation of a residential class for Assistant U.S. Trustees and Trial Attorneys at the Program's National Bankruptcy Training Institute on criminal enforcement topics including common fraud schemes that affect the bankruptcy system, detection and referral of potential criminal activity, and criminal discovery obligations.

Bankruptcy Fraud Internet "Hotline." In FY 2015, the Program documented 647 email submissions via the National Bankruptcy Fraud Hotline (USTP.Bankruptcy.Fraud@usdoj.gov).

SUMMARY

The USTP's criminal enforcement program was enhanced again in FY 2015 through the actions described in this report. Through detecting and referring fraud schemes, collaborating with its law enforcement partners, and providing specialized training, the Program will continue its enforcement efforts to combat fraud and abuse and to protect the integrity of the bankruptcy system.