



**United States Department of Justice  
Executive Office for United States Trustees**

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**Report to Congress:**

**Criminal Referrals by the  
United States Trustee Program  
Fiscal Year 2009**

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

**April 2010**

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## **EXECUTIVE SUMMARY**

The Director of the Executive Office for United States Trustees 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 (USTP or Program) made 1,611 bankruptcy and bankruptcy-related criminal referrals during Fiscal Year (FY) 2009. This represents a 9.5 percent increase over the 1,471 criminal referrals made during FY 2008. A referral often contains more than one allegation. The five most common allegations contained in the FY 2009 criminal referrals involved false oaths or statements (37.4%), followed by concealment of assets (29.9%), tax fraud (20.5%), bankruptcy fraud schemes (19.7%), and mortgage/real estate fraud (19%).

Of the 1,611 criminal referrals, as of January 4, 2010, formal criminal charges had been filed in connection with 24 of the referrals, 1,007 of the referrals remained under review or investigation, and 580 of the referrals were declined for prosecution or administratively closed.

In FY 2009, 75 USTP offices participated in local bankruptcy fraud, mortgage fraud, or other specialized working groups and task forces in districts across the country; staff assisted in the investigation and prosecution of bankruptcy crimes by serving as Special Assistant U.S. Attorneys in cases and providing support as expert and fact witnesses; training was conducted for

nearly 800 Program staff, private trustees, and federal, state, and local law enforcement agents; and the Program's Criminal Enforcement Unit reviewed nearly 800 submissions received via the Program's Internet email "hotline."

## **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 Executive Office for United States Trustees (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 USTP is the component of the Department of Justice whose mission it is to promote the integrity and efficiency of the bankruptcy system by enforcing bankruptcy laws, providing oversight of private trustees, and maintaining operational excellence. The Program consists of 21 regions with 95 field offices 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.<sup>1/</sup>

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 action." With the enactment of 18 U.S.C. § 158, which requires designation of a prosecutor and

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<sup>1/</sup> The USTP has jurisdiction in all federal judicial districts except those in Alabama and North Carolina.

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), which was implemented nationwide in FY 2005. 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 2009, the Program made 1,611 bankruptcy and bankruptcy-related criminal referrals. Each referral may be sent to multiple agencies but is counted only once within CETS. Similarly, one referral may contain multiple allegations. The breadth of allegations involved in criminal referrals is evident in Table 1. The five most common allegations contained within the 1,611 criminal referrals involved false oaths or statements (37.4%), followed by concealment of assets (29.9%), tax fraud (20.5%), bankruptcy fraud schemes (19.7%), and mortgage/real estate fraud (19%).

**Table 1: Criminal Referrals by Type of Allegation**

| Type of Allegation   | Referrals |          |
|--|-----------|----------|
|  | Number    | Percent* |
| False Oaths/Statements [18 U.S.C. § 152(2) and (3)]                                | 602       | 37.4%    |
| Concealment [18 U.S.C. § 152(1) and (7)]   | 481       | 29.9%    |
| Tax Fraud [26 U.S.C. § 7201, <i>et seq.</i> ]                                      | 331       | 20.5%    |
| Bankruptcy Fraud Scheme [18 U.S.C. § 157]  | 317       | 19.7%    |
| Mortgage/Real Estate Fraud   | 306       | 19.0%    |
| ID Theft [Use of False/Multiple SSNs]  | 263       | 16.3%    |
| Perjury/False Statements   | 175       | 10.9%    |
| Mail/Wire Fraud [18 U.S.C. §§ 1341 and 1343]                                       | 86        | 5.3%     |
| Bank Fraud [18 U.S.C. § 1344]  | 81        | 5.0%     |
| Concealment/Destruction/Withholding of Documents [18 U.S.C. § 152(8) and (9)]      | 58        | 3.6%     |
| Post-Petition Receipt of Property [18 U.S.C. § 152(5)]                             | 44        | 2.7%     |
| Forged Documents   | 39        | 2.4%     |
| Sarbanes-Oxley [18 U.S.C. § 1519]  | 35        | 2.2%     |
| State Law Violations   | 32        | 2.0%     |
| Embezzlement [18 U.S.C. § 153]   | 25        | 1.6%     |
| Investor Fraud   | 21        | 1.3%     |
| Money Laundering [18 U.S.C. §§ 1956 and 1957]                                      | 16        | 1.0%     |
| Credit Card Fraud/Bust-Outs  | 15        | <1%      |
| Corporate Bust-Outs/Bleed-Outs   | 13        | <1%      |
| Serial Filer   | 11        | <1%      |
| Disregard of Bankruptcy Law/Rule by Bankruptcy Petition Preparer [18 U.S.C. § 156] | 10        | <1%      |
| Federal Program Fraud  | 10        | <1%      |
| Conspiracy   | 7         | <1%      |
| Criminal Contempt  | 6         | <1%      |
| False Claim [18 U.S.C. § 152(4)]   | 6         | <1%      |
| Obstruction of Justice   | 6         | <1%      |
| Bribery [18 U.S.C. § 152(6)]   | 5         | <1%      |
| Corporate Fraud  | 5         | <1%      |
| Threats of Violence  | 5         | <1%      |
| Immigration Offense  | 3         | <1%      |
| False Statement/Report - Loan/Credit Application                                   | 2         | <1%      |
| Health Care Fraud [18 U.S.C. § 1347]   | 2         | <1%      |
| Insurance Fraud  | 2         | <1%      |

**Table 1: Criminal Referrals by Type of Allegation**

| Type of Allegation   | Referrals |          |
|--|-----------|----------|
|  | Number    | Percent* |
| Misuse of Seals of Courts; Seals of Departments or Agencies<br>[18 U.S.C. §§ 505 and 506]  | 2         | <1%      |
| Professional Fraud   | 2         | <1%      |
| Securities Fraud   | 2         | <1%      |
| Structuring Transactions to Evade Reporting Requirements   | 2         | <1%      |
| Terrorism  | 2         | <1%      |
| Violation of Probation   | 2         | <1%      |
| Adverse Intent/Officer Conduct   | 1         | <1%      |
| Child Pornography  | 1         | <1%      |
| Extortion  | 1         | <1%      |
| False/Fraudulent Demands Against United States   | 1         | <1%      |
| Fee Agreement/Cases Under Title 11 [18 U.S.C. § 155]   | 1         | <1%      |
| General False/Fraudulent Statement   | 1         | <1%      |
| Possession of False Papers to Defraud U.S.   | 1         | <1%      |
| Public Corruption  | 1         | <1%      |
| Theft or Receipt of Stolen Mail [18 U.S.C. § 1708]   | 1         | <1%      |
| Unlawful Influence of Trustee  | 1         | <1%      |
| Uttering Counterfeit Obligations or Securities   | 1         | <1%      |
| * Percent based on 1,611 referrals. A referral often contains more than one allegation, so the sum of the percentages for referrals exceeds 100 percent. |           |          |

## II. OUTCOMES OF CRIMINAL REFERRALS

Table 2 shows the collective outcome/disposition of the 1,611 criminal referrals made by the Program during FY 2009 as of January 4, 2010.<sup>2/</sup> Of the 1,611 referrals, 1,007 referrals (62.5%) remain under investigation or review, 24 referrals (1.5%) have resulted in formal charges, 543 referrals (33.7%) were declined for prosecution, and 37 referrals (2.3%) were administratively closed.<sup>3/</sup>

| <b>Table 2: Outcome/Disposition of FY 2009 Referrals (as of 01/04/10)</b>  |                  |                |
|--|------------------|----------------|
| <b>Outcome/Disposition</b>   | <b>Referrals</b> |                |
|  | <b>Number</b>    | <b>Percent</b> |
| Under Review in U.S. Attorney's Office   | 740              | 46%            |
| With Investigative Agency  | 267              | 17%            |
| Formal Charges Filed (Case Active)   | 17               | 1%             |
| Formal Charges Filed (Case Closed)   | 7                | <1%            |
| -- At Least One Conviction or Guilty Plea  | 7                |                |
| -- At Least One Pre-trial Diversion  | 0                |                |
| -- At Least One Dismissal  | 0                |                |
| -- At Least One Acquittal  | 0                |                |
| Prosecution Declined by United States Attorney   | 543              | 34%            |
| Administratively Closed  | 37               | 2%             |
| 1) Outcome and disposition information will change over time. Table 2 reflects outcome and disposition information reported in CETS as of January 4, 2010. |                  |                |
| 2) Rounded percent based on 1,611 referrals.   |                  |                |

<sup>2/</sup> The USTP 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.

<sup>3/</sup> Administratively closed referrals may still be under review/investigation by an agency (other than a USAO) that has not historically provided updates on case referrals. Because the referral has been open for a period of time and the USTP has not been able to verify the outcome/disposition, the case has been administratively closed. Referrals that are administratively closed may be reopened at a later date.



The 24 cases referenced in Table 2 in which formal charges were filed between October 1, 2008, and January 4, 2010, are prosecutions that originated from a FY 2009 referral as derived from CETS.<sup>4/</sup> 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 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 2009 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 2009 represents a 9.5 percent increase over the number of referrals made in FY 2008.

| <b>FY 2008</b> | <b>FY 2009</b> | <b>Percent Change</b> |
|----------------|----------------|-----------------------|
| 1,471          | 1,611          | + 9.5%                |

### IV. PROGRAM EFFORTS TO PREVENT BANKRUPTCY FRAUD AND ABUSE

For each of the last four fiscal years, the Program has experienced growth in the number of its bankruptcy and bankruptcy-related criminal referrals. This includes annual increases of more than 20 percent from FY 2006 through 2008, and an increase in FY 2009 of 9.5 percent over FY 2008. The Program remains committed to identifying and referring for prosecution bankruptcy fraud and other crimes, and has an effective system in place to detect common, higher-risk frauds.

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<sup>4/</sup> Table 2 reflects only disposition information related to referrals made by the USTP in FY 2009. It does not reflect the entirety of prosecutions with bankruptcy charges brought by the Department of Justice in FY 2009. A reporting of all prosecutions would include those that originated from referrals made by the Program in prior fiscal years, as well as prosecutions related to referrals not made by the Program.

The Program's Criminal Enforcement Unit (CrEU), consisting primarily of former federal prosecutors who oversee and coordinate the Program's criminal enforcement efforts, provides critical support to the field offices in the criminal fraud area. Through the issuance of guidance and resource materials, extensive training and educational opportunities (both in-person and via pre-recorded video), and collaborative efforts with our law enforcement partners, the Program has established the necessary systems to effectively combat fraud and abuse that threaten the integrity of the bankruptcy system.

Highlights of the Program's criminal enforcement efforts in FY 2009 include the following.

*Mortgage Fraud.* In FY 2009, the Program continued to focus increased efforts on addressing mortgage fraud, including rescue fraud and loan origination fraud schemes. Criminal referrals relating to mortgage fraud were up by more than 60 percent over FY 2008, after more than doubling between FY 2007 and FY 2008.

*Bankruptcy Fraud and Other Specialized Working Groups and Task Forces.* The Program is a member of the President's recently established interagency Financial Fraud Enforcement Task Force and its Mortgage Fraud Working Group, as well as the Department of Justice's national Mortgage Fraud Working Group headed by the Criminal Division. In addition, 75 USTP offices participate on 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, among others, USAOs, FBI, United States Postal Inspection Service, Internal Revenue Service, Offices of the Inspector General for the Social Security Administration and the Department of Housing and Urban Development, United States Secret Service, and Immigration and Customs Enforcement.

*Special Assistant United States Attorneys.* Approximately 25 Program attorneys in field offices across the country are designated as Special Assistant U.S. Attorneys to assist USAOs in

the prosecution of bankruptcy crimes. In addition, Program staff is often called upon to provide expert or fact testimony at trial.

*Training.* During FY 2009, CrEU provided bankruptcy fraud training and instruction at the National Advocacy Center and throughout the country. This included local and regional bankruptcy fraud training sessions for Program staff, private trustees, Assistant United States Attorneys, federal law enforcement agents, and local and state prosecutors and law enforcement agents that reached approximately 800 people.

*Bankruptcy Fraud Internet "Hotline."* In FY 2009, the USTP documented 788 email submissions via its Internet bankruptcy fraud hotline.

## **SUMMARY**

In FY 2009, the United States Trustee Program continued its efforts to combat fraud and abuse in the bankruptcy system, particularly in the priority area of mortgage fraud. The Program remains committed to identifying and referring for prosecution bankruptcy fraud and other crimes. Through uniform internal controls, collaboration with our law enforcement partners, and training and education, the Program will continue its enforcement efforts in order to promote the integrity of the bankruptcy system.