



**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 2010**

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

**March 2011**

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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 1,721 bankruptcy and bankruptcy-related criminal referrals during Fiscal Year (FY) 2010. This represents a 6.8 percent increase over the 1,611 criminal referrals made during FY 2009. One referral often contains more than one allegation. The five most common allegations contained in the FY 2010 criminal referrals involved false oaths or statements (38.2%), concealment of assets (30.2%), tax fraud (24.2%), bankruptcy fraud schemes (20.7%), and identity theft or use of false/multiple Social Security numbers (17.1%). In addition, nearly 12 percent of the allegations contained in the FY 2010 criminal referrals involved mortgage/real estate fraud.

Of the 1,721 criminal referrals, as of December 6, 2010, formal criminal charges had been filed in connection with 25 of the referrals, 1,109 of the referrals remained under review or investigation, and 587 of the referrals had been declined for prosecution.

In FY 2010, the USTP participated in more than 70 local bankruptcy fraud, mortgage fraud, and other specialized working groups and task forces in districts across the country; was an active member of the President's Financial Fraud Enforcement Task Force and an important contributor to the "Operation Stolen Dreams" mortgage fraud sweep; 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; conducted training for nearly 1,000 Program staff, private panel trustees, and federal, state, and local law enforcement agents; and continued to review referrals received via the Program's Bankruptcy Fraud Internet "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 for the benefit of all stakeholders – debtors, creditors and the public. 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 a Federal Bureau of Investigation (FBI) agent in each district to address bankruptcy-related

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

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 2010, the Program made 1,721 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 1,721 criminal referrals involved false oaths or statements (38.2%), concealment of assets (30.2%), tax fraud (24.2%), bankruptcy fraud schemes (20.7%), and identity theft or use of false/multiple Social Security numbers (17.1%). In addition, nearly 12 percent of the allegations contained in the FY 2010 criminal referrals involved mortgage/real estate fraud.

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

Type of Allegation	Number	Percent*
False Oaths/Statements [18 U.S.C. § 152(2) and (3)]	658	38.2%
Concealment [18 U.S.C. § 152(1) and (7)]	519	30.2%
Tax Fraud [26 U.S.C. § 7201, <i>et seq.</i> ]	416	24.2%
Bankruptcy Fraud Scheme [18 U.S.C. § 157]	357	20.7%
ID Theft or Use of False/Multiple SSNs	295	17.1%
Mortgage/Real Estate Fraud	204	11.9%
Perjury/False Statements	117	6.8%
Mail/Wire Fraud [18 U.S.C. §§ 1341 and 1343]	99	5.8%
Bank Fraud [18 U.S.C. § 1344]	92	5.3%
Concealment/Destruction/Withholding of Documents [18 U.S.C. § 152(8) and (9)]	70	4.1%
Forged Documents	45	2.6%
Embezzlement [18 U.S.C. § 153]	41	2.4%
Serial Filer	37	2.1%
Post-Petition Receipt of Property [18 U.S.C. § 152(5)]	29	1.7%
Investor Fraud	27	1.6%
Sarbanes/Oxley [18 U.S.C. § 1519]	24	1.4%
Credit Card Fraud/Bust-Outs	19	1.1%
Corporate Fraud	17	1.0%
Conspiracy [18 U.S.C. § 371]	15	<1%
Obstruction of Justice	15	<1%
False Claim [18 U.S.C. § 152(4)]	14	<1%
Knowing Disregard of Bankruptcy Law or Rule [18 U.S.C. § 156]	14	<1%
Money Laundering [18 U.S.C. §§ 1956 and 1957]	14	<1%
State Law Violations	11	<1%
Criminal Contempt [18 U.S.C. § 402]	10	<1%
Federal Program Fraud	10	<1%
Corporate Bust-Outs/Bleed-Outs	9	<1%
Health Care Fraud [18 U.S.C. § 1347]	8	<1%
Professional Fraud	8	<1%
Immigration Offense	7	<1%
Misuse of Seals of Courts; Seals of Departments or Agencies [18 U.S.C. §§ 505 and 506]	7	<1%
Bribery [18 U.S.C. § 152(6)]	5	<1%
Insurance Fraud	5	<1%
Threats of Violence	4	<1%
Internet Fraud	3	<1%
Adverse Interest and Officer Conduct [18 U.S.C. § 154]	1	<1%
Child Pornography [18 U.S.C. § 2252A]	1	<1%
Terrorism	1	<1%
Theft or Receipt of Stolen Mail [18 U.S.C. § 1708]	1	<1%

\* Rounded percent based on 1,721 referrals. One referral often contains more than one allegation, so the sum of the percentages for referrals will exceed 100 percent.

## II. OUTCOMES OF CRIMINAL REFERRALS

Table 2 shows the collective outcome/disposition of the 1,721 criminal referrals made by the Program during FY 2010 as of December 6, 2010.<sup>2/</sup> Of the 1,721 referrals, 1,109 referrals (64.4%) remain under investigation or review, 25 referrals (1.5%) have resulted in formal charges, and 587 referrals (34.1%) were declined for prosecution.

<b>Table 2: Outcome/Disposition of FY 2010 Referrals (as of 12/06/10)</b>		
<b>Outcome/Disposition</b>	<b>Referrals</b>	
	<b>Number</b>	<b>Percent</b>
Under Review in U.S. Attorney's Office	782	45.4%
With Investigative Agency	327	19.0%
Formal Charges Filed (Case Active)	19	1.1%
Formal Charges Filed (Case Closed)	6	0.3%
– At least One Conviction or Guilty Plea	6	
– At least One Pre-trial Diversion	0	
– At least One Dismissal	0	
– At least One Acquittal	0	
Prosecution Declined by United States Attorney	587	34.1%
1) Outcome and disposition information will change over time. Table 2 reflects information reported in CETS as of December 6, 2010.		
2) Rounded percent based on 1,721 referrals.		

The 25 cases referenced in Table 2 in which formal charges were filed between October 1, 2009, and December 6, 2010, are prosecutions that originated from a FY 2010 referral as derived from CETS.<sup>3/</sup> It is important to note that white-collar criminal referrals like those

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<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> Table 2 reflects only disposition information related to referrals made by the USTP in FY 2010. It does not reflect the entirety of prosecutions with bankruptcy charges brought by the Department of Justice in FY 2010. 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.

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 2010 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 2010 represents a 6.8 percent increase over the number of referrals made in FY 2009.

<b>Table 3: Comparison Between Criminal Referrals in FY 2009 and FY 2010</b>		
<b>FY 2009</b>	<b>FY 2010</b>	<b>Percent Change</b>
1,611	1,721	+ 6.8%

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

For each of the last five 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 in FY 2006 through 2008, and increases of more than 6 percent in FY 2009 and FY 2010. 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.

The Program’s Office of Criminal Enforcement, consisting primarily of former federal prosecutors who oversee and coordinate the Program’s criminal enforcement efforts, has significantly strengthened the Program’s ability to detect, refer, and assist in the prosecution of criminal violations. 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 its 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 2010 include the following.

*Mortgage Fraud.* In FY 2010, the Program continued its emphasis on combating mortgage fraud. It made more than 200 mortgage fraud referrals, which represents nearly 12 percent of all criminal referral allegations and includes such schemes as foreclosure rescue fraud and loan origination fraud. As a member of the Mortgage Fraud Working Group of the President's Financial Fraud Enforcement Task Force, the Program participated in Operation Stolen Dreams, a nationwide sweep targeting mortgage fraudsters throughout the country. More than two dozen of the criminal cases cited in Operation Stolen Dreams were attributable to the Program, along with about 20 percent of the civil cases. In addition, to assist Program staff and others in identifying and addressing mortgage and foreclosure rescue fraud, a training video featuring presentations by the USTP Director and other Program personnel was developed and is available to all employees through the Department's Office of Legal Education JUSTLearn video-on-demand system.

*Bankruptcy Fraud and Other Specialized Working Groups and Task Forces.* In addition to the Program's active participation on the President's Financial Fraud Enforcement Task Force, USTP offices are involved in more than 70 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. The Program is also a member of the National Mortgage Fraud Working Group sponsored by the Criminal Division of the Department of Justice.

*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 2010, the Program's Office of Criminal Enforcement provided bankruptcy fraud training and instruction to approximately 1,000 individuals throughout the country at national, regional, and local bankruptcy fraud training sessions for Program staff, private panel trustees, Assistant United States Attorneys, federal law enforcement agents, and local and state prosecutors and law enforcement agents. Of particular note, the Program conducted a specialized training course on Criminal Bankruptcy Fraud at its National Bankruptcy Training Institute, which is part of the Department's National Advocacy Center. The course was presented to USTP attorneys, Assistant United States Attorneys, and FBI agents and explored topics relating to criminal bankruptcy fraud referrals, investigations, and prosecutions, including mortgage fraud schemes, foreclosure rescue fraud, and Ponzi schemes.

*Bankruptcy Fraud Internet "Hotline."* In FY 2010, the USTP documented 798 email submissions via the National Bankruptcy Fraud Hotline ([USTP.Bankruptcy.Fraud@usdoj.gov](mailto:USTP.Bankruptcy.Fraud@usdoj.gov)).

## **SUMMARY**

In FY 2010, the United States Trustee Program continued its focus on combating fraud and abuse in the bankruptcy system. Through uniform internal controls, collaboration with its law enforcement partners, and training and education, the Program will continue its enforcement efforts in order to promote the integrity of the bankruptcy system.