United States Department of Justice
Executive Office for United States Trustees

Report to Congress:

Criminal Referrals by the United States Trustee Program Fiscal Year 2011

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

May 2012

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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 (Program) made 1,968 criminal referrals during Fiscal Year (FY) 2011. This represents a 14.4 percent increase over the 1,721 criminal referrals made during FY 2010. One referral often contains more than one allegation. The five most common allegations contained in the FY 2011 criminal referrals involved tax fraud (35.8%), false oath or statement (33.2%), concealment of assets (24.8%), bankruptcy fraud scheme (21.5%), and identity theft or use of false/multiple Social Security numbers (15.1%). Seven percent of the allegations in the FY 2011 criminal referrals involved mortgage or real estate fraud.

Of the 1,968 criminal referrals, as of December 6, 2011, formal criminal charges had been filed in connection with 19 of the referrals, 1,270 of the referrals remained under review or investigation, 677 of the referrals had been declined for prosecution, and two had been administratively closed.

In FY 2011, the Program was an active member of the President's Financial Fraud Enforcement Task Force (FFETF), three 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 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 is also 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 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 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. 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.[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

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

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 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 2011, the Program made 1,968 criminal referrals. Each referral may be sent to multiple agencies, but it is counted only once in 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 in the FY 2011 criminal referrals involved tax fraud (35.8%), false oath or statement (33.2%), concealment of assets (24.8%), bankruptcy fraud scheme (21.5%), and identity theft or use of false/multiple Social Security numbers (15.1%).

Table 1: Criminal Referrals by Type of Allegation		
Type of Allegation	**Referrals**	
	Number	**Percent***
Tax Fraud [26 U.S.C. § 7201, et seq.]	704	35.8%
False Oath/Statement [18 U.S.C. § 152(2) and (3)]	653	33.2%
Concealment [18 U.S.C. § 152(1) and (7)]	489	24.8%
Bankruptcy Fraud Scheme [18 U.S.C. § 157]	423	21.5%
Identity Theft or Use of False/Multiple SSNs	297	15.1%
Mortgage/Real Estate Fraud	137	7.0%
Mail/Wire Fraud [18 U.S.C. §§ 1341 and 1343]	107	5.4%
Bank Fraud [18 U.S.C. § 1344]	106	5.4%
Perjury/False Statement	94	4.8%
Concealment/Destruction/Withholding of Documents [18 U.S.C. § 152(8) and (9)]	68	3.5%
Sarbanes/Oxley [18 U.S.C. § 1519]	49	2.5%
Forged Document	41	2.1%
State Law Violation	36	1.8%
Embezzlement [18 U.S.C. § 153]	35	1.8%
Post-Petition Receipt of Property [18 U.S.C. § 152(5)]	28	1.4%
Conspiracy [18 U.S.C. § 371]	26	1.3%
False Claim [18 U.S.C. § 152(4)]	21	1.1%
Investor Fraud	20	1.0%
Money Laundering [18 U.S.C. §§ 1956 and 1957]	20	1.0%
Federal Program Fraud	17	<1%
Disregard of Bankruptcy Law/Rule by Bankruptcy Petition Preparer [18 U.S.C. § 156]	14	<1%
Credit Card Fraud/Bust-Out	13	<1%
Obstruction of Justice	12	<1%
Serial Filer	10	<1%
Misuse of Seals of Courts; Seals of Departments or Agencies [18 U.S.C. §§ 505 and 506]	8	<1%
Bribery [18 U.S.C. § 152(6)]	7	<1%
Corporate Fraud	6	<1%
Criminal Contempt [18 U.S.C. § 402]	6	<1%
Corporate Bust-Out/Bleed-Out	5	<1%
Internet Fraud	4	<1%
Threats of Violence	4	<1%
Adverse Interest/Officer Conduct [18 U.S.C. § 154]	3	<1%
Drug Offense	3	<1%
Extortion	3	<1%
Health Care Fraud [18 U.S.C. § 1347]	3	<1%
Professional Fraud	3	<1%
Abusive Reaffirmation of Debt/Creditor Abuse	2	<1%
False Personation [18 U.S.C. § 912]	2	<1%
Insurance Fraud	2	<1%
Terrorism	2	<1%
False Credit Repair	1	<1%
Immigration Offense	1	<1%
Larceny	1	<1%
Possession of a Machine Gun [26 U.S.C. § 53]	1	<1%
Violation of Probation	1	<1%
* Percent based on 1,968 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 1,968 criminal referrals the Program made during FY 2011 as of December 6, 2011.[2/] Of the 1,968 referrals, 1,270 referrals (64.5%) remained under investigation or review, 19 referrals (1%) resulted in formal charges, 677 referrals (34.4%) were declined for prosecution, and two referrals (0.1%) were administratively closed.[3/]

Table 2: Outcome/Disposition of FY 2011 Referrals (as of 12/06/11)

Outcome/Disposition	Referrals	
	Number	Percent
Under Review in United States Attorney's Office	736	37.4%
With Investigative Agency	534	27.1%
Formal Charges Filed (Case Active)	15	0.8%
Formal Charges Filed (Case Closed)	4	0.2%
– At least One Conviction or Guilty Plea	4	
– At least One Pre-trial Diversion	0	
– At least One Dismissal	0	
– At least One Acquittal	0	
Prosecution Declined by United States Attorney	677	34.4%
Administratively Closed	2	0.1%

1) Outcome and disposition information will change over time. The information contained in Table 2 reflects information contained in CETS as of December 6, 2011.
2) Rounded percent based on 1,968 referrals.

[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/] 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 Program 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 19 cases referenced in Table 2 in which formal charges were filed between October 1, 2010, and December 6, 2011, are prosecutions that originated from a FY 2011 referral as derived from CETS.[4/] 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 and consistent with previous years' data that a high percentage of cases referred in FY 2011 are still under investigation or review.

II. COMPARISON WITH CRIMINAL REFERRALS MADE IN PREVIOUS YEAR

As shown in Table 3, the number of criminal referrals made during FY 2011 represents a 14.4 percent increase over the number of referrals made in FY 2010.

Table 3: Comparison Between Criminal Referrals in FY 2010 and FY 2011		
FY 2010	**FY 2011**	**Percent Change**
1,721	1,968	+14.4%

For each of the last five fiscal years, the Program has experienced growth in the number of its criminal referrals. Total annual criminal referrals more than doubled between FY 2006 and FY 2011.

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

[4/] Table 2 reflects only disposition information related to referrals the Program made in FY 2011. It does not reflect the entirety of prosecutions with bankruptcy charges brought by the Department of Justice in FY 2011. 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.

Criminal Enforcement (OCE) oversees and coordinates the Program's criminal enforcement efforts, and has significantly 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 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 2011 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 was a contributor to Operation Broken Trust, a nationwide operation organized by the Task Force to target investment fraud. The Program is also a member of the Mortgage Fraud Working Group, Bank Fraud Working Group, and Identity Theft Working Group sponsored by the Department of Justice's Criminal Division, and participates in more than 90 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, Offices of the Inspector General 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 Trouble Asset Relief Program, and Immigration and Customs Enforcement, among others.

Mortgage Fraud. Program referrals for mortgage fraud include foreclosure rescue fraud schemes and loan origination fraud schemes. In FY 2011, 137 criminal referrals, totaling seven percent of all referrals, contained allegations related to mortgage fraud.

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 are also called upon to assist with investigations and to provide expert or fact testimony at trial.

Training. During FY 2011, OCE and Program staff provided bankruptcy and related fraud training for federal, state, and local law enforcement personnel; Program employees; and private bankruptcy trustees throughout the country and at the Department of Justice's National Advocacy Center. The Program also provided specialized training on detecting and combatting bankruptcy-related schemes undertaken by rescue fraud perpetrators against financially distressed homeowners.

Bankruptcy Fraud Internet "Hotline." In FY 2011, the USTP documented 845 email submissions via the National Bankruptcy Fraud Hotline (USTP.Bankruptcy.Fraud@usdoj.gov).

SUMMARY

The total number of annual criminal referrals made in FY 2011 increased 14.4 percent over those made in FY 2010. The United States Trustee Program continued to combat fraud and abuse in the bankruptcy system in FY 2011. Through detecting and referring fraud schemes, collaborating with our law enforcement partners, and providing specialized training, the Program will continue its criminal enforcement efforts in order to protect the integrity of the bankruptcy system.