United States Department of Justice
Executive Office for United States Trustees

Report to Congress:

Criminal Referrals by the United States Trustee Program Fiscal Year 2012

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

March 2013

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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 2,120 bankruptcy and bankruptcy-related criminal referrals during Fiscal Year (FY) 2012. This represents a 7.7 percent increase over the 1,968 criminal referrals made during FY 2011. One referral often contains more than one allegation. The five most common allegations contained in the FY 2012 criminal referrals involved tax fraud (37.5%), false oath or statement (32.4%), concealment of assets (25.0%), bankruptcy fraud scheme (22.6%), and identity theft or use of false/multiple Social Security numbers (16.7%).

Of the 2,120 criminal referrals, as of January 10, 2013, formal criminal charges had been filed in connection with 27 of the referrals, 1,355 of the referrals remained under review or investigation, and 738 of the referrals had been declined for prosecution.

In FY 2012, 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 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

[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 2012, the Program made 2,120 bankruptcy and bankruptcy-related 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, with referral allegations in more than 40 separate categories. The five most common allegations contained in the FY 2012 criminal referrals involved tax fraud (37.5%), false oath or statement (32.4%), concealment of assets (25.0%), bankruptcy fraud scheme (22.6%), and identity theft or use of false/multiple Social Security numbers (16.7%).

Table 1: Criminal Referrals by Type of Allegation

Type of Allegation	Referrals	
	Number	Percent*
Tax Fraud [26 U.S.C. § 7201, et seq.]	796	37.5%
False Oath/Statement [18 U.S.C. § 152(2) and (3)]	686	32.4%
Concealment [18 U.S.C. § 152(1) and (7)]	530	25.0%
Bankruptcy Fraud Scheme [18 U.S.C. § 157]	480	22.6%
ID Theft and Use of False/Multiple SSNs	353	16.7%
Mortgage/Real Estate Fraud	133	6.3%
Mail/Wire Fraud [18 U.S.C. §§ 1341 and 1343]	110	5.2%
Bank Fraud [18 U.S.C. § 1344]	99	4.7%
Concealment/Destruction/Withholding of Documents [18 U.S.C. § 152(8) and (9)]	99	4.7%
Perjury/False Statement	89	4.2%
Forged Documents	46	2.2%
Sarbanes/Oxley [18 U.S.C. § 1519]	39	1.8%
Embezzlement [18 U.S.C. § 153]	35	1.7%
Post-Petition Receipt of Property [18 U.S.C. § 152(5)]	31	1.5%
State Law Violation	30	1.4%
Conspiracy [18 U.S.C. § 371]	23	1.1%
Disregard of Bankruptcy Law/Rule by Bankruptcy Petition Preparer [18 U.S.C. § 156]	22	1.0%
Federal Program Fraud	20	<1%
Money Laundering [18 U.S.C. §§ 1956 and 1957]	19	<1%
Serial Filer	19	<1%
Investor Fraud	17	<1%
Corporate Fraud	16	<1%
False Claim [18 U.S.C. § 152(4)]	16	<1%
Credit Card Fraud/Bust-Out	15	<1%
Criminal Contempt [18 U.S.C. § 402]	14	<1%
Professional Fraud	12	<1%
Corporate Bust-Out/Bleed-Out	11	<1%
Insurance Fraud	8	<1%
Bribery [18 U.S.C. § 152(6)]	7	<1%
Health Care Fraud [18 U.S.C. § 1347]	6	<1%
Misuse of Seals of Courts; Seals of Departments or Agencies [18 U.S.C. §§ 505 and 506]	6	<1%
Obstruction of Justice	5	<1%
Adverse Interest/Officer Conduct [18 U.S.C. § 154]	4	<1%
Threats of Violence	4	<1%
Drug Offense	2	<1%
Immigration Offense	2	<1%
Structuring	2	<1%
Abusive Reaffirmation of Debt/Creditor Abuse	1	<1%
Child Pornography [18 U.S.C. § 2252A]	1	<1%
Internet Fraud	1	<1%
Non-payment of Employee Benefit Premiums	1	<1%
Terrorism	1	<1%

* Percent based on 2,120 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 2,120 criminal referrals the Program made during FY 2012 as of January 10, 2013.[2/] Of the 2,120 referrals, 1,355 referrals (63.9%) remained under investigation or review, 27 referrals (1.3%) resulted in formal charges, and 738 referrals (34.8%) were declined for prosecution.

Table 2: Outcome/Disposition of FY 2012 Referrals (as of 01/10/13)		
Outcome/Disposition	**Referrals**	
	Number	**Percent**
Under Review in United States Attorney's Office	790	37.3%
With Investigative Agency	565	26.7%
Formal Charges Filed (Case Active)	20	0.9%
Formal Charges Filed (Case Closed)	7	0.3%
-- At least One Conviction or Guilty Plea	6	
-- At least One Pre-trial Diversion	0	
-- At least One Dismissal	1	
-- At least One Acquittal	0	
Prosecution Declined by United States Attorney	738	34.8%
1) Outcome and disposition information will change over time. The information contained within Table 2 reflects information contained within CETS as of January 10, 2013. 2) Rounded percent based on 2,120 referrals.		

The 27 cases referenced in Table 2 in which formal charges were filed between October 1, 2011, and January 10, 2013, are prosecutions that originated from a FY 2012 referral as derived from CETS.[3/] It is important to note that white-collar criminal referrals like those

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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 2012. It does not reflect the entirety of prosecutions with bankruptcy charges brought by the Department of Justice in FY 2012. 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.

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 2012 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 2012 represents a 7.7 percent increase over the number of referrals made in FY 2011.

Table 3: Comparison Between Criminal Referrals in FY 2011 and FY 2012

FY 2011	FY 2012	Percent Change
1,968	2,120	7.7%

For each of the last seven fiscal years, the Program has experienced growth in the number of its bankruptcy and bankruptcy-related criminal referrals.

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 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 2012 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 the Distressed Homeowners Initiative, a nationwide effort organized by the Task Force which focused on fraud targeting homeowners, such as foreclosure rescue schemes. 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 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 members are also called upon to assist with investigations and to provide expert or fact testimony at trial. In addition, in FY 2012 the OCE designated three Program trial attorneys as part-time regional criminal coordinators to provide support, assistance, and training to Program personnel regarding the identification and referral of suspected bankruptcy fraud.

Training. During FY 2012, the OCE and Program staff provided bankruptcy and related fraud training to more than 2,500 federal, state, and local law enforcement personnel, Program employees, and private bankruptcy trustees throughout the country. This included specialized training to Program staff on detecting and combatting bankruptcy-related schemes undertaken by rescue fraud perpetrators against financially distressed homeowners and the Sovereign Citizen Movement.

Bankruptcy Fraud Internet "Hotline." In FY 2012, the USTP documented 838 email submissions via the National Bankruptcy Fraud Hotline (USTP.Bankruptcy.Fraud@usdoj.gov).

SUMMARY

The United States Trustee Program continued to combat fraud and abuse in the bankruptcy system in FY 2012. Through detecting and referring fraud schemes, collaborating with our law enforcement partners, and providing specialized training, the Program will continue its enforcement efforts in order to protect the integrity of the bankruptcy system.