United States Department of Justice
Executive Office for United States Trustees

Report to Congress:

Criminal Referrals by the United States Trustee Program Fiscal Year 2013

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

April 2014

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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 2,074 bankruptcy and bankruptcy-related criminal referrals during Fiscal Year (FY) 2013. This represents a 2.2 percent decrease from the 2,120 criminal referrals made during FY 2012. The five most common allegations contained in the FY 2013 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 2,074 criminal referrals, as of January 30, 2014, formal criminal charges had been filed in connection with 10 of the referrals, 1,296 of the referrals remained under review or investigation, 766 of the referrals were declined for prosecution, and two were administratively closed.

In FY 2013, 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 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 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 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

[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 2013, the Program made 2,074 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 more than 45 separate categories. The five most common allegations contained in the FY 2013 criminal referrals involved tax fraud (37.9%), false oath or statement (31.7%), concealment of assets (25.8%), bankruptcy fraud scheme (21.5%), and identity theft or use of false/multiple Social Security numbers (16.6%).

Table 1: Criminal Referrals by Type of Allegation		
Type of Allegation	**Referrals**	
	Number	**Percent***
Tax Fraud [26 U.S.C. § 7201, et seq.]	786	37.9%
False Oath/Statement [18 U.S.C. § 152(2) and (3)]	657	31.7%
Concealment [18 U.S.C. § 152(1) and (7)]	535	25.8%
Bankruptcy Fraud Scheme [18 U.S.C. § 157]	446	21.5%
ID Theft and Use of False/Multiple SSNs	344	16.6%
Mail/Wire Fraud [18 U.S.C. §§ 1341 and 1343]	124	6.0%
Perjury/False Statement	110	5.3%
Mortgage/Real Estate Fraud	86	4.1%
Concealment/Destruction/Withholding of Documents [18 U.S.C. § 152(8) and (9)]	84	4.1%
Bank Fraud [18 U.S.C. § 1344]	68	3.3%
Forged Documents	55	2.7%
Sarbanes/Oxley [18 U.S.C. § 1519]	48	2.3%
Federal Program Fraud	39	1.9%
Embezzlement [18 U.S.C. § 153]	38	1.8%
Conspiracy [18 U.S.C. § 371]	33	1.6%
State Law Violations	32	1.5%
Post-Petition Receipt of Property [18 U.S.C. § 152(5)]	25	1.2%
Money Laundering [18 U.S.C. §§ 1956 and 1957]	23	1.1%
Investor Fraud	22	1.1%
False Claim [18 U.S.C. § 152(4)]	21	1.0%
Disregard of Bankruptcy Law/Rule by Bankruptcy Petition Preparer [18 U.S.C. § 156]	19	<1%
Professional Fraud	13	<1%
Misuse of Seals of Courts/Seals of Departments or Agencies [18 U.S.C. §§ 505/506]	11	<1%
Obstruction of Justice	10	<1%
Threats of Violence	9	<1%
Insurance Fraud	8	<1%
Corporate Fraud	7	<1%
Health Care Fraud [18 U.S.C. § 1347]	7	<1%
Bribery [18 U.S.C. § 152(6)]	6	<1%
Criminal Contempt [18 U.S.C. § 402]	6	<1%
Internet Fraud	6	<1%
Serial Filer	5	<1%
Corporate Bust-Out/Bleed-Out	4	<1%
Credit Card Fraud/Bust-Out	4	<1%
Counterfeiting	2	<1%
Terrorism	2	<1%
Adverse Interest/Officer Conduct [18 U.S.C. §154]	1	<1%
Anti-Dumping/Countervailing	1	<1%
Child Pornography [18 U.S.C. § 2252A]	1	<1%
Drug Offense	1	<1%
Environmental Destruction	1	<1%
Extortion	1	<1%
False Personation	1	<1%
Fee Agreement in Case Under Title 11 [18 U.S.C. § 155]	1	<1%
Murder	1	<1%
Race/Hate Crime	1	<1%
* Percent based on 2,074 referrals. Each 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 2,074 criminal referrals the Program made during FY 2013 as of January 30, 2014.[2/] Of the 2,074 referrals, 1,296 referrals (62.5%) remained under investigation or review, 10 referrals (0.5%) resulted in formal charges, 766 referrals (36.9%) were declined for prosecution, and two referrals (<0.1%) were administratively closed.[3/]

Table 2: Outcome/Disposition of FY 2013 Referrals (as of 01/30/14)

Outcome/Disposition[1]	Referrals	
	Number	Percent[2]
Under Review in United States Attorney's Office	798	38.5%
With Investigative Agency	498	24.0%
Formal Charges Filed (Case Active)	6	0.3%
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	766	36.9%
Administratively Closed	2	<0.1%

1) Outcome and disposition information will change over time. The information contained within Table 2 reflects information contained within CETS as of January 30, 2014.

2) Rounded percent based on 2,074 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 agencies (other than a USAO) that have not historically provided updates on referrals. After a referral has been open for a period of time and if the USTP is not able to verify the outcome/disposition, the Program will administratively close the file in CETS. Referrals that are administratively closed may be reopened at a later date.

The 10 cases referenced in Table 2 in which formal charges were filed between October 1, 2012, and January 30, 2014, are prosecutions that originated from a FY 2013 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 that a high percentage of cases referred in FY 2013 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 2013 represents a 2.2 percent decrease from the number of referrals made in FY 2012.

Table 3: Comparison Between Criminal Referrals in FY 2012 and FY 2013		
FY 2012	**FY 2013**	**Percent Change**
2,120	2,074	-2.2%

Prior to FY 2013, the Program experienced seven consecutive years of growth in the number of bankruptcy and bankruptcy-related criminal referrals it made. The slight decline in FY 2013 may be attributable to several factors, including fewer staff onboard and reduced bankruptcy filings. Notwithstanding these challenges, FY 2013 referrals exceeded the number of referrals made in FY 2011 and nearly met the number made in FY 2012.

[4/] Table 2 reflects only disposition information related to referrals the Program made in FY 2013. It does not reflect the entirety of prosecutions with bankruptcy charges brought by the Department of Justice in FY 2013. 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.

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 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 2013 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 Mortgage Fraud, Bank Fraud, and Identity Theft Working Groups sponsored by the Department of Justice's Criminal Division. The Program also 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 also are called upon to assist with investigations and to provide expert or fact testimony at trial. In addition, in FY 2013, 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 2013, the OCE and Program staff provided bankruptcy and bankruptcy-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 Live Meeting distance training for Program staff on identity theft and on detecting and combatting bankruptcy-related schemes undertaken by rescue fraud perpetrators against financially distressed homeowners.

Bankruptcy Fraud Internet "Hotline." In FY 2013, the USTP documented 693 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 2013. Through detecting and referring fraud schemes, collaborating with its law enforcement partners, and providing specialized training, the Program will continue its enforcement efforts to protect the integrity of the bankruptcy system.